92-717

NO.

Supreme Court, U.S.
FILED
OCT 23 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOSEPH EMILE SISSLER

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

STUART R. SHAFER (P-25599)
REID AND REID
One Business & Trade Center
200 Washington Square, North
Lansing, Michigan 48933-1384
(517) 487-6566
Attorneys for Defendant-
Petitioner

QUESTIONS PRESENTED

1. Whether a defendant has a Sixth Amendment right at a pretrial suppression hearing where the essential witnesses are police officers who refuse to testify after exercising their Fifth Amendment rights, and, if so, whether such a conflict should be resolved in favor of the defendant because of the inherent danger of substantial prejudice.

2. Whether an "anticipatory" search warrant is valid where the contraband was not on a sure course to its destination and where the warrant was based not on probable cause, but on numerous contingencies outside the control of the police.

3. Whether a defendant's challenge to a search is limited to only those items in which (s)he has a property or possessory interest where the police flagrantly disregarded the limiting terms of the search warrant and seized items far outside the scope of the warrant and where the prevailing law is that

even evidence which is properly seized pursuant to a warrant must be suppressed if the officers executing the warrant exhibit "flagrant disregard" for its terms.

4. Whether a defendant's Fifth Amendment rights are violated where (s)he is interrogated within view of his/her attorney, a "co-suspect," who, unbeknownst to defendant, was intentionally not advised of his Miranda rights and denied his repeated requests to call an attorney, and where defendant made an equivocal request for an attorney.

TABLE OF CONTENTS

	PAGE
Questions Presented	i
Table of Cases	vii
Opinion Below	2
Constitution	2
Statutes	3
Parties to Proceedings	4
Jurisdiction	4
STATEMENT OF THE CASE	4
Introduction	4
The Proceedings Below	6-8
Statement of Facts	8-20
ARGUMENT	
I. The Sixth Circuit Incorrectly Found That Sissler Was Not Denied His Sixth Amendment Right to Confront His Accusers	21-31
II. The Sixth Circuit Incorrectly Found That The Anticipatory Search Warrant Satisfied Both The Sure Course and Probable Cause Standards	31-35

III. The Sixth Circuit, Finding That Sissler Has Standing And That The Police Engaged In Egregious Police Misconduct, Improperly Failed To Quash the Search and Suppress The Evidence 35-44

IV. The Sixth Circuit, Based On An Incorrect Assumption of Facts, Erred In Finding That Sissler's Fifth Amendment Rights Were Not Violated 44-48

REASONS FOR GRANTING THE WRIT 48

CONCLUSION 50

Appendices

Appendix A
Decision of United States Court of Appeals (6th Cir. June, 1992) .. 1-34

Appendix B
Judge Benjamin F. Gibson's June 8, 1990 Opinion 35-55

Appendix C
Judge Benjamin F. Gibson's August 30, 1991 Opinion 56-77

Appendix D
Indictment 78-80

Appendix E
Plea Agreement 81

Appendix F
Judge Gibson's October 10, 1990 Order Reopening Proofs 82-88

Appendix G
Judgment in a Criminal Case 89-90

Appendix H
Hon. Benjamin F. Gibson's
October 7, 1991 Opinion & Order.... 91-93

Appendix I
Hon. Benjamin F. Gibson's
October 14, 1992 Order 94-95

Appendix J
Affidavit for Search Warrant
and Search Warrant 96-111

Appendix K
FBI Agent Langkos' Testimony 112-115

Appendix L
Testimony from Hearing held
May 24, 1990 before the Hon.
Benjamin F. Gibson 116-121

Appendix M
Testimony from Suppression
Hearing held March 22 and
April 4, 1991 122-138

Appendix N
Testimony from Suppression
Hearing held March 19 &
21, 1991 139-140

Appendix O
Inventory of Financial Records
Seized; Inventory of Computer
Disks 141-186

Appendix P
Notes from Team Meeting Minutes ..187

Appendix Q
Note from Lt. Paul Whitford 188

Appendix R
Excerpt from Lansing Police Report (Statement from APA Warren and APA Cipriani) 189-191

Appendix S
Excerpt from Supplemental Report..192-196

Appendix T
Excerpt from "Policy Governing Reverse Drug Transactions" 197-199

Appendix U
Excerpt from "Guidelines for Operation of the Tri-County Metro Narcotics Squad" 200

Appendix V
Excerpt from Sworn Statement of James Joseph 201-205

Appendix W
Temporary Restraining Order 206-209

Appendix X
Testimony of Chris Magnus and Steven Luciano 210-212

Appendix Y
Criminal Complaints re: Daniel Zolnai and Leslie Diebolt 213-216

Appendix Z
Excerpt of MCL 764.1(1) and MCL 764.1a(1) 217

TABLE OF CASES

	PAGE
Chambers v Mississippi, 401 U.S. 284, 298 (1973)	22, 23
Davis v Alaska, 415 U.S. 308, 318 (1974)	31
Dodge v United States, 272 U.S. 530, 532 (1926)	51
Greene v McElroy, 360 U.S. 474, 496 (1959)	23
McCray v Illinois, 386 U.S. 300, 314 (1967)	27
Michigan v Mosley, 423 U.S. 96, 104 (1975)	48
Minnesota v Olson, 495 U.S. 91 (1990)	38
Owen v Alabama, 849 F.2d 536 (11th Cir 1988)	47
Owen v State, So. 2d; 45 C.L. 1536 (1990)	47
Pennsylvania v Ritchie, 480 U.S. 39, 52 (1987)	27
State v Tolson, 248 Iowa 733, 82 NW2d 105 (1957)	50
Stevens v Bordenkircher, 746 F.2d 342, 347 (6th Cir. 1984)	30
Towne v Dugger, 899 F.2d 1104 (1990)	46,47, 48

United States v Garcia, 882 F.2d 699 (2d Cir.) cert denied, 493 U.S. 943 (1989) 33, 34

United States v Heldt, 688 F.2d 1238, 1239 (D.C. Cir. 1981), cert denied sub. nom. Hubbard v United States, 456 U.S. 926 (1982) 35

United States v Hendricks, 743 F.2d 653 (9th Cir. 1984), cert denied, 470 U.S. 1006 (1985) 34

United States v Henson, 848 F.2d 1374, 1383 (6th Cir. 1988), cert denied 109 S. Ct. 784 (1989) 35

United States v Jones, 641 F.2d 425 (6th Cir. 1981) 44

United States v Kimble, 719 F.2d 1253, 1257 (5th Cir. 1983) quoting Fountain v United States, 384 F.2d 624, 628 (5th Cir. 1967))... 24, 25

United States v Lambert, 771 F.2d 83, cert denied, 474 U.S. 1034 (6th Cir. 1985) 35

United States v Lowe, 575 F.2d 1193 (6th Cir.), cert denied, 439 U.S. 869 (1978) 33, 34

United States v Medlin, 842 F.2d 1194, 1199 (10th Cir. 1988) 35, 38 39, 42 43, 44

United States v Moore, 954 F.2d 379, 381 (6th Cir. 1992)..... 27

United States v Osorio, 949 F.2d 38, 41 (2d Cir. 1991) 38, 39

United States v Rettig, 589 F.2d 418, 423 (9th Cir. 1978) 36, 38, 39, 40, 41

United States v Talkington, 843 F.2d 1041 (7th Cir. 1988) 45

United States v Upton, 763 F.Supp. 232, 239 (S.D. Ohio 1991) 33

CONSTITUTION

U.S. Const., Amend VI 2
U.S. Const., Amend IV 2
U.S. Const., Amend V 2

STATUTES

28 U.S.C. Sec. 1254(1) 3, 4
MCL 764.1(1) 28
MCL 764.1a(1) 28

OTHER

F.R. Crim. P. 11(a)(2) 7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOSEPH EMILE SISSLER

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

TO: THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

PRAYER

The Petitioner, Joseph Emile Sissler, Defendant-Appellant in the Court below, respectfully prays that a Writ of Certiorari issue to review the Opinion of the United States Court of Appeals for the Sixth Circuit entered in this case.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit affirming the Decision of the United States District Court for the Western District of Michigan, Southern Division was entered on June 10, 1992 in an unreported decision and is reproduced hereto as App. A. The District Court's June 8, 1990 Opinion is reproduced hereto as App. B. The District Court's August 30, 1991 Opinion is reproduced hereto as App. C.

CONSTITUTION

U. S. Const., Amend IV:

> **Searches and Seizures**
>
> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Amend V:

> **Capital Crimes; double jeopardy; self-incrimination; due process; just compensation for property**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., Amend VI:

Jury trial for crimes, and procedural rights.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATUTES

28 U.S.C. Sec. 1254(1):

"Cases in the courts of appeals may be

reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decrees."

PARTIES TO THIS PROCEEDING

The caption of this case in this Court contains the names of all parties.

JURISDICTION

The Opinion of the United States Court of Appeals for the sixth Circuit was filed on August 6, 1991. Upon the motion of Petitioner, this Court granted an extension of time for filing until November 7, 1992. The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Introduction

On January 16, 1990, Petitioner, Joseph Emile Sissler, Defendant-Appellant below, ("Sissler"), was an overnight guest at the Okemos, Michigan home of Robert L. Baldori and his girlfriend, Kelly S. Boyle. Shortly after

midnight, two dozen local and federal law enforcement officers burst through the door to execute a federal "anticipatory" search warrant of the premises.

This search warrant and its execution has led, inter alia, to the issuance of criminal charges against two of the police officers, including the chief evidence officer, for wilfully exceeding the terms of the search warrant by removing (stealing) property from the premises. It has been established that the police intentionally seized property far beyond the limiting terms of the search warrant, including, inter alia, $1,030 in Canadian currency, computer printers, modems, and disk drives, a fax machine, records, and three dozen private and intimate (nude) color slides and several nude photographs of Ms. Boyle, which were stolen by the police and later passed around to other people and used in a "stag slide show" at the police station. It has also been established that the Asset

Seizure Unit, comprised of local police assigned to a tri-county narcotics unit, "piggy-backed" this federal search warrant and intentionally seized property outside the scope of the search warrant.

At the heart of this appeal, and the numerous and serious constitutional issues it raises, is whether evidence seized by the police, during this embarrassing and documented display of intentional and flagrant misconduct can be used by the government to against Sissler.

The Proceedings Below

On January 16, 1990, a criminal complaint was filed against Sissler. On January 24, 1990, the complaint was dismissed and a two-count indictment was filed in its stead charging Sissler with Attempt Possession with the Intent to Distribute Marijuana and Interstate Travel in Aid of Racketeering. (App. D).

On June 8, 1990, the district court

denied Sissler's Motions to Quash the Search Warrant and to Suppress Defendant's Statements. (App. B). On June 12, 1990, pursuant to a plea bargain, Sissler entered a conditional plea of guilty, thereby preserving his right to appeal the denial of his pretrial motions. F.R. Crim. P. 11(a)(2). (App. E). On September 21, 1990, the district court granted Defendant's Motion to Reopen Proofs and for a Rehearing on the basis of newly discovered evidence relating to police misconduct in the execution of the search warrant. (App. F). On August 30, 1991, following the reopened suppression hearing, the court below denied Defendant's renewed Motion to Suppress. (App. C). On September 23, 1991, Sissler was sentenced to 57 months in prison. (App. G). On October 7, 1991, the district court granted Defendant's Motion for Release Pending Appeal. (App H). On June 10, 1992, the United States Sixth Circuit Court of Appeals filed its Opinion denying Sissler's

appeal. (App. A). On October 14, 1992, the district court ordered that Sissler appear to begin serving his sentence on October 23, 1992. (App. I).

STATEMENT OF FACTS

On January 16, 1991 at 12:15 a.m., two dozen law enforcement officials, including members of the Tri-County Metro Narcotics Squad ("Metro"), Ingham County Prosecutor's Asset Seizure Unit, Federal Bureau of Investigation ("FBI"), Internal Revenue Service ("IRS"), and Western Michigan Enforcement Team ("WEMET"), (collectively "the police"), executed a federal "anticipatory search warrant" at the home / law office / recording studio of well-known musician and local attorney Robert L. Baldori ("Baldori"), at 2719 East Mt. Hope Road, Okemos, Michigan. Present in the premises at the time of the police raid were Baldori and his girlfriend,

Kelly Boyle ("Boyle")[1], of the same address, and Petitioner - Defendant, Joseph Emile Sissler ("Sissler"), a resident of Virginia.

Although the police had no information about Sissler and did not even know his identity prior to the raid, he was searched, interrogated, arrested, taken to jail, and charged in federal court that very same day. In contrast, Baldori, who was the target of the investigation, was not arrested, Mirandized, nor charged with any crime that night. Thirty-one days after the raid on his premises, the Ingham County Prosecutor's Office ("ICPO") issued three state felony marijuana charges against Baldori. No federal charges were ever brought against Baldori.

On January 12, 1990, FBI Agent Dennis Langkos, with the assistance of assistant United States Attorney, John Bruha, prepared an affidavit and application for a search

---

[1]Ms. Boyle, who was alone in her bedroom at the time of raid, was not involved in any criminal activity.

warrant, and an anticipatory search warrant, which was authorized by the federal Magistrate. (App. J). The affidavit consists almost entirely of unsupported, unreliable, and uncorroborated hearsay from James Joseph ("Joseph"), an informant and convicted felon who was under enormous pressure to target and set-up Baldori pursuant to a plea and sentence agreement.[2] Although this was a federal anticipatory search warrant, no marijuana had been obtained for this reverse transaction until three days after the warrant had been

---

[2]Lankgos' affidavit for the search warrant avers that Joseph told him that he sold Baldori marijuana on four occasions in 1989, the first alleged transaction occurring in April or May, 1989. The affidavit fails to indicate the date of any other transaction. (App. J) Thus, within the four corners of the affidavit, there is no indication that Joseph sold marijuana to Baldori after May, 1989, 8 months prior to the issuance of the anticipatory search warrant. Langkos admits that neither he nor anyone else made the slightest attempt to verify any of the information provided by Joseph. (App. K).

issued.[3] None of the two dozen law enforcement officers involved in the raid had previously participated in obtaining or executing an anticipatory search warrant. None of the executing police officers had read nor been given a copy of the search warrant or its supporting affidavit, nor did any of them know what items were "particularly" described or what items could be seized under its terms. (App. L, pp. 15-16, 130, 159-160). The police officers admitted, upon reviewing the search warrant after its execution, that they were unable to determine its time limitations. (App. M, pp. 145, 163-164, 170-171, 222, 226, 344). The search warrant was drafted by Lankgos and AUSA Bruha intending that it not restrict the seizure of documents to any time-frame. To justify the seizure of thousands of

---

[3]On January 11 or 12, 1990, Metro Lt. Whitford had merely "inquired" about the possibility of obtaining 160 pounds of government-owned marijuana, as reflected in ¶13 of the affidavit. (App. J, ¶ 13).

documents dating back as far as 1969, AUSA Bruha argued to the district court that the police were not limited in their search by any time periods relating to documents because the search warrant contained no such time limitations. (App. N, pp. 3-5). Members of the IRS and the ICPO's Asset Seizure Unit also admitted that they "piggy-backed" the federal "anticipatory search warrant" because they did not have independent probable cause to obtain their own search warrants. (App. M, pp. 14, 65-66, 199).

To appreciate just how general, massive, unrestricted, and illegal the search and seizure was, one need only review the inventories reluctantly prepared by the ICPO a year after the search only after ordered to do so by Judge Houk. (App. O).

The police seized thousands of documents, including the corporate records of several businesses in which Baldori and/or Boyle had ownership interest and all of Baldori's

computer equipment and disks.[4] Although all of Baldori's 500 computer disks were seized, most of which were clearly labelled as commercial software, attorney-client files, and law school outlines, the police failed to ever retain an expert to read the disks, sort out what may be important to the police, and return to Baldori and Ms Boyle those documents and disks important to their livelihood and personal life.

Particularly outrageous is the theft by the police of personal and intimate (nude) photographs and color slides of Ms Boyle,

---

[4]Among the documents seized were Baldori's canceled checks dating back to 1969, attorney-client material, movie and concert ticket stubs, cartoons, recipes, magazines, corporate records of several businesses, and many other items beyond the scope of the warrant. Det. Early testified he seized documents to determine Baldori's "net worth." (App. M, pp. 28, 50, 81). Nothing in the search warrant authorizes the seizure of such documents and, in fact, Agent Healey testified that "we weren't looking for records for net worth." (App. M, p. 257).

which she kept in a box under her bed.[5] The police entertained themselves with a slide show of the nude photographs and slides at the police station. For five months following the raid, the police engaged in a "conspiracy of silence" about these thefts and professional misconduct.[6] This evolved into a "cover-

---

[5]Officer Diebolt improperly removed nude photographs from a prior and unrelated search warrant scene, for which he received only a verbal reprimand. (App. M, pp. 310-311).

[6]Only after one of the police officers admitted at his deposition to being at the slide show was there a request by Metro Squad command to the subordinate officers for a return of the stolen photographs and slides. Even then, however, there was no attempt to investigate the theft, or to discipline or charge the officers who stole the photographs and slides. On July 11, 1990, Metro Lt. Whitford, at a staff meeting, requested that the police officers return the photographs and slides with "no questions asked." (App. P). Lt. Whitford advised the officers that they could lose court cases such as this one because of this behavior. (App. Q).

up."[7] A token criminal investigation of the Metro officers was finally by Ingham County Prosecutor, Donald Martin ("Martin"), and conducted by Captain Rapp, the executive director of Metro. Although Judge Houk ordered that all of the criminal investigation reports be turned over to undersigned counsel no later than October 31, 1990, not surprisingly, the government failed to turn over the only incriminating report.[8]

---

[7]Although every police officer deposed testified that they had seen the photographs and slides of Ms. Boyle at the police station, not one could "recall" who stole them, had possession of them, on whose desks they had seen them, or who ran the slide projector, and most could not "recall" the names of any other officer who was present for the "stag show." Although Lt. Patrick and Agent Langkos were identified as being present at the slide show, both denied being present. Even two assistant prosecutors, one who was shown a photograph and the other who was offered to be shown a photograph, could not recall who was involved. (App. R).

[8]On September 23, 1990, Dep. Tim Doerr, who was not a Metro Squad officer, notified Lt. Patrick that Metro Off. Diebolt came to Doerr's residence and showed him a box of slides of Ms. Boyle.

The basis for the "anticipatory search warrant" was a "reverse drug transaction" in which the police used a convicted felon motivated by a sweetheart plea and sentence bargain, to "target" and "set-up" Baldori, his attorney and friend of twenty-three years, by delivering to him government-owned marijuana.[9] The police clearly violated most of the substantive provisions of their own policies regarding reverse drug transactions, executing search warrants, tagging and cataloguing of evidence, and the use of confidential informants.[10] The blatant violation of their

---

This information was contained in several police reports that were withheld from the defense long after they were available. (App. S).

[9]Although Joseph had been told that he faced up to a forty-year sentence without this agreement, he received a sentence of only one-year work release. Joseph had previously been convicted of a marijuana felony in Florida and served his sentence in a Florida penitentiary.

[10]This was a joint Metro and FBI operation governed by the policies and guidelines of Metro, including the "Policy Governing 'Reverse Drug

Transactions.'" (App. T). The Policy defines a reverse drug transaction "as the offering for sale of a controlled substance by an undercover police officer in the performance of his/her duty for the purpose of furthering a criminal investigation."

The Policy expressly requires that only experienced police officer from a departmental work unit may act as a "seller." In blatant violation of the Policy, the government used a civilian, Joseph, to act as the seller. The Policy requires that every attempt be made to eliminate the confidential informant from the actual reverse transaction; however, no effort was made to eliminate Joseph.

The Policy requires that the drugs shall never be out of the immediate control of the undercover officer; however, the marijuana left the immediate control of the police from the time it was placed in the trunk of Joseph's car until the search warrant was executed 2 1/2 hours later. The contraband was even out of Joseph's control for 1/2 hour after he left the Baldori premises.

The Policy requires that the operation shall be concluded and the defendant(s) arrested as soon as all of the elements of the anticipated crime has been satisfied. The police violated this policy in at least two respects. First, all of the elements of the anticipated and alleged charges were satisfied upon Joseph delivering the police-owned marijuana to Baldori's premises, yet, they waited two hours before executing the search warrant. Second, the police

own policies is further evidence of the pattern of bad faith, outrageous, and egregious conduct on the part of the police. The actions of the police towards their own confidential informant can be construed as nothing less than an attempt to obstruct

---

violated the terms of the anticipatory search warrant. The Magistrate specifically "commanded" the police to execute the search warrant "upon delivery of the marijuana" to the premises, not two hours after delivery of the marijuana. (App. J). Second, Baldori was not arrested until a month after the raid.

The Policy requires that all personnel, including officers from other agencies, be apprised of the Policy and agree to comply with it; however, neither the FBI nor the IRS, nor for that matter, most of the Metro officers, were apprised of the Policy.

The government violated numerous other policies: 1) No attempt was made to verify any of the information obtained from Joseph, a confidential informant and request approval from the local prosecutor (App. U); 2) Failure to have a uniformed officer assigned to the raid (App. U); and, 3) Failure to properly tag, catalogue, and inventory property seized, and otherwise maintain an appropriate chain of evidence. (App. M, p. 271, 274-275, 281, 283, 287, 292, 334).

justice.[11] On January 4, 1991, when undersigned counsel attempted to depose two police officers about the theft of property from the Baldori premises, they invoked their Fifth Amendment rights against self-incrimination. (App. X). On March 19, 1991,

---

[11]On October 21, 1990, undersigned took a sworn statement of the confidential informant, Joseph, who testified that Lt. Whitford informed him within days following the execution of the search warrant that the police had removed Ms. Boyle's personal and intimate photographs from the premises. Joseph testified that FBI Agent Langkos showed him, in the Lansing FBI office, a stack of what Langkos represented were some of Ms. Boyle's personal and intimate photographs. (App. V). Whitford and Langkos have both denied Joseph's accusations. If Joseph's testimony is true, then Whitford and Langkos committed perjury. Langkos admitted that he was informed by Whitford of Joseph's accusations and then went with Whitford to Grand Rapids specifically to talk to Joseph about his accusations. Langkos had no legitimate purpose for seeing Joseph at that time. Langkos admitted that, even though he argued with Joseph, Joseph refused to change his story. (App. M, pp. 363-366). On December 19, 1990, Judge Houk, issued a Temporary Restraining Order against, inter alia, Whitford and Langkos restraining them from further communication with Joseph. (App. W).

Chief Evidence Officer Daniel Zolnai and Officer Les Diebolt invoked their Fifth Amendment rights and refused to testify at the reopened suppression hearing. (App. N, pp. 16-18) Officer Luciano invoked his Fifth Amendment right and refused to testify about the execution of the search warrant and alleged thefts by the police when called by Sissler; however, he conveniently testified when called by the government at the suppression hearing.[12]

---

[12]Luciano was a necessary witness in order for the government to introduce a videotape of the search into evidence. Since Luciano denied any knowledge or culpability regarding the property alleged to have been stolen from the Baldori premises, it must be assumed that he was either lying at the March 19, 1991 hearing or his earlier refusal to testify when called by Defendant was an attempt by him to obstruct Defendant's right to discover the facts surrounding the execution of the search warrant.

ARGUMENT

I. THE SIXTH CIRCUIT INCORRECTLY FOUND THAT SISSLER WAS NOT DENIED HIS SIXTH AMENDMENT RIGHT WHERE POLICE OFFICER WITNESSES, INCLUDING THE CHIEF EVIDENCE OFFICER, EXERCISED THEIR FIFTH AMENDMENT RIGHTS AT A SUPPRESSION HEARING.

The Sixth Circuit incorrectly found that Sissler was not denied his Sixth Amendment right where police officer witnesses, including the chief evidence officer, exercised their Fifth Amendment rights at a suppression hearing. The district judge reopened the suppression hearing specifically to allow inquiry into "the good faith of the police officers and the question of whether or not other items beyond the scope of the search warrant were seized in flagrant disregard for the limitations set forth in the search warrant." (App. F, p. 4). Defendant was denied the right to confront the crucial witnesses on these issues. The key police officers who executed the search warrant, including the chief evidence officer who was

responsible for seizing the evidence, invoked their Fifth Amendment rights and refused to testify as to the search and seizure of evidence.[13]

It is not disputed that Sissler has a Confrontation Clause right without regard to who calls the witness, Chambers v Mississippi, 401 U.S. 284, 298 (1973), and it cannot be plausibly maintained that the police officer witnesses were not witnesses against Sissler.

---

[13]These officers had good reason to exercise their Fifth Amendment Rights. That same month criminal charges were issued against them by the Ingham County Prosecutor in connection with their execution of this search warrant. (App. Y). The facts underlying the criminal charges against the two officers could be determinative of the very issues for which the suppression hearing was reopened. At issue was the reasonableness and good faith of the police officers who executed the search warrant. Without the ability to question Officers Zolnai and Diebolt, Defendant and the district court were effectively denied the ability to conduct a proper fact finding into these issues. Consequently, the district court improperly afforded the benefit of any and all doubt on these issues to the police officers who had been charged criminally with illegally executing the search warrant.

The very evidence seized by these witnesses is the essence of the government's case against Sissler.

> Of course, the right to confront and to cross-examine is not absolute and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process. [citation omitted.] But its denial or significant diminution calls into question the ultimate 'integrity of the fact-finding process' and requires that the competing interest be closely examined. [citation omitted.]

Chambers, at 295.

The U.S. Supreme Court has specifically held that the fundamental protections of confrontation and cross-examination are rooted in the right of an individual to be presented with the government's evidence and the opportunity to defend against it. Greene v. McElroy, 360 U.S. 474, 496 (1959). It also is well-established that where there is a conflict between a defendant's Sixth Amendment right to confrontation and a witness' Fifth Amendment right to refuse to testify, such a

conflict must be resolved in favor of the defendant because of the inherent danger of substantial prejudice.

> When a witness legitimately invokes his fifth amendment privilege, creating a potential conflict with a defendant's sixth amendment right to confrontation, the relevant question on review is "whether defendant's inability to make the inquiry creates a substantial danger of prejudice by depriving him of the ability to test the truth of the witness's direct testimony."

United States v. Kimble, 719 F.2d 1253, 1257 (5th Cir. 1983)(quoting Fountain v. United States, 384 F.2d 624, 628 (5th Cir. 1967)).

The district court conceded that at least one of these police officers called by Sissler played a "crucial role" in the "execution of the search warrant."[14] (App. C, p. 11). In

---

[14]However, the district court incorrectly stated that only one police officer invoked his Fifth Amendment privilege. The record clearly reflects that two police officers, Chief Evidence Officer Zolnai and Officer Diebolt, both invoked their Fifth Amendment rights and refused to testify at the suppression hearing. Officer Magnus, who interrogated Defendant, and Officer Luciano invoked

a puzzling twist, the court ruled that the officers' refusal to testify did not violate Sissler's Sixth Amendment right because "otherwise, defendants could simply manufacture violations of the Confrontation Clause by calling witnesses who they know will invoke their Fifth Amendment rights and calling them crucial to their defense." (App. C, pp. 11-12). Stepping even further afield of recognized constitutional doctrine, the court concluded that it was "inappropriate" and "unethical for the defense to call a witness it knows will assert a Fifth Amendment right. . .." (App. C. p. 12).

The district court reversed the presumption in favor of the right to confrontation articulated in Kimble, supra. The witnesses in question are neither ordinary nor peripheral witnesses. Their testimony would not have been cumulative nor directed at

---

their Fifth Amendment rights and refused to testify at their deposition.

ancillary issues. These witnesses are the very police officers who executed the search warrant and seized the evidence at issue. Indeed, one of the police officers who invoked his Fifth Amendment privilege at the suppression hearing was the chief evidence officer, responsible for seizing, tagging, cataloguing, securing, and maintaining the evidence, and writing the principal police report. Officer Diebolt participated in the search and seizure operation. Officer Magnus was one of the two police officers who interrogated Defendant and also assisted in the execution of the search warrant. Thus, these witnesses were not, as the district court intimated, merely "witness[es] associated with the Government," but they were essential witnesses Defendant needed for demonstrating the lack of "good faith" in the execution of the search warrant, and they were essential witnesses for the Government to prove its case at trial.

The 6th Circuit cites Pennsylvania v Ritchie, 480 U.S. 39, 52 (1987) for the proposition that the right of confrontation is a trial right. But the Ritchie court also said:

> It is well settled that the government has the obligation to turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment." [citations omitted].

Ritchie, at 57. Here, the government, by virtue of its police officer witnesses refusing to testify, withheld exculpatory evidence from Sissler.

Relying on United States v Moore, 954 F.2d 379 381 (6th Cir. 1992) and McCray v Illinois, 386 U.S. 300, 314 (1967), the 6th Circuit held that the government need not produce all witnesses competent to testify, nor are the government witnesses compelled to waive testimonial privileges. Moore and McCray are cases where the defendant attempted to discover the identification of a

confidential informant. That is not the situation here.

The right to confrontation would be hollow indeed if the government could nullify Sissler's Sixth Amendment right by their police witnesses, who gathered the evidence upon which their case is base, hiding behind the Fifth Amendment. The police officers' testimony was critical to Sissler's Motion to Suppress. The district court explained that the "good faith" of the police officers who executed the search warrant was the core issue for determination at the reopened suppression hearing.[15] The burden of proof shifts to the government to establish that the police were entitled to the benefit of the "good faith" exception once Sissler demonstrates that the

---

[15]By issuing the criminal charges against Zolnai and Diebolt, the Ingham County Prosecutor and the Magistrate already determined that there is "reasonable cause" to believe that these police officers "wilfully exceeded the authority granted by the search warrant." See Mich. Comp. Laws 764.1(1) and Mich. Comp. Laws 764.1a(1). (App. Z).

police exceeded the scope of the search warrant. The testimony of officers Zolnai and Diebolt were essential to negate the government's claim of good faith.[16] With the officers' testimony, Sissler would have defeated the government claim of entitlement to the "good faith" exception and would have demonstrated that these officers, particularly the chief evidence officer, acted in bad faith by committing such crimes as larceny during the course of the search warrant execution.

It is important to note that Sissler entered a conditional plea preserving the pretrial legal issues, which were inappropriate to bring before a jury. Therefore, the suppression hearing was

---

[16]Sissler's inability to confront the chief evidence officer, as well as the other officers, was especially problematic since there was absolutely no documentation identifying which officer seized any particular item. (App. M, p. 74). Unless an officer actually "recalled" seizing a particular item, the district court precluded the defense from asking questions concerning that item or why it was seized.

Sissler's one opportunity to examine the relevant police witnesses to establish the facts necessary for the court to determine the issue of flagrancy.

When the police invoked their Fifth Amendment rights, thereby depriving Sissler of his right to confront, cross-examine, and satisfy the test for quashing the warrant and suppressing the evidence, Sissler's constitutional rights were plainly violated and the case against him must be dismissed. When the confrontation clause is violated, the court must consider whether the error is harmless beyond a reasonable doubt. Stevens v. Bordenkircher, 746 F.2d 342, 347 (6th Cir. 1984). Here, as in Stevens, that test cannot be satisfied.

> In our view, failure to permit cross-examination of a key government witness concerning bias, prejudice or motive cannot be construed reasonably as harmless error.

Id. A fortiori, when a defendant is denied the ability to confront and question under

oath the police officers who are critical both to his defense and the government's case, the case cannot be maintained against that defendant within the bounds of the Constitution. See also Davis v Alaska, 415 U.S. 308, 318 (1974) (Denial of "the right of effective cross-examination . . . 'would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.'").

II. THE SIXTH CIRCUIT INCORRECTLY FOUND THAT THE ANTICIPATORY SEARCH WARRANT SATISFIED BOTH THE SURE COURSE AND PROBABLE CAUSE STANDARDS WHERE THE CONTRABAND WAS NOT IN THE CONTROL OF THE POLICE AND THE "PROBABLE CAUSE" WAS BASED ON NUMEROUS CONTINGENCIES.

The Sixth Circuit, based on an inaccurate assumption, incorrectly found that the "anticipatory" search warrant satisfied both the "sure course" and "probable cause" standards. (App. A, p. 7). The Sixth Circuit concluded that, "At the time the warrant was issued, the police controlled the marijuana that was eventually delivered to Baldori.

Joseph, an informant, working for the government, had arranged to deliver it to Baldori's home on January 15." (App. A, p. 7). This conclusion is not true.

The undisputed facts are that Lt. Whitford attempted to make arrangements with WEMET, a separate police agency not involved in this case, to obtain 160 pounds of marijuana for use in this reverse drug transaction. However, no marijuana was obtained from WEMET until three (3) days after the search warrant was authorized. Additionally, Metro was only able to obtain only 88 pounds, not 160 pounds.

The anticipated transaction between Joseph and Baldori was contingent upon a number of factors, including, inter alia, 1) Metro obtaining marijuana from WEMET; 2) Joseph's continued cooperation; 3) Baldori agreeing to meet with Joseph; 4) Sissler agreeing to purchase the marijuana; and 5) Sissler's ability to raise the money. If each

of these contingencies were not met, then the anticipated transaction would not occur. There was no probable cause, just speculation, that the anticipated transaction would occur.

The prevailing view is that contraband must be "on a sure course to its destination." United States v Garcia, 882 F.2d 699 (2d Cir.), cert. denied, 493 U.S. 943 (1989). The Sixth Circuit incorrectly relies on Garcia and United States v Lowe, 575 F.2d 1193 (6th Cir.), cert. denied, 439 U.S. 869 (1978) for a probable cause standard to review an "anticipatory" search warrant. "The determining factor in Garcia, Dornhoffer, and the other cases cited therein, is whether the contraband "is on a sure course to its destination. 882 F.2d at 702; 859 F.2d at 1198; (citations omitted)." United States v Upton, 763 F.Supp. 232, 239 (S.D. Ohio 1991).

In Garcia, the search warrant was obtained after 1) the couriers agreed to cooperate, 2) the contraband was in their

possession, and 3) specific arrangements were made with defendant for delivery. There were no contingencies other than obtaining the search warrant. Lowe, is a "mail" case, and, therefore, probable cause was based on the fact that the package was "on a sure course to its destination."

The Sixth Circuit incorrectly relies on United States v Hendricks, 743 F.2d 653 (9th Cir. 1984), cert. denied, 470 U.S. 1006 (1985). The Hendricks' court also required probable cause that the contraband be on a sure course to its destination. Id, at 655. Where there are contingencies left to chance or the discretion of the police, no probable cause exists. In Hendricks, no arrangements had yet been made for delivery of the contraband to the defendant; in contrast to Garcia, where arrangements had been made prior to obtaining the search warrant. Here, there were, at most, only tentative arrangements dependent on a variety of contingencies, which

do not add up to probable cause; moreover, the contraband was not a sure course to its destination since Metro did not even have possession of the marijuana at the time the search warrant was issued.

III. THE SIXTH CIRCUIT, FINDING THAT SISSLER HAS STANDING AND THAT THE POLICE ENGAGED IN EGREGIOUS POLICE MISCONDUCT, IMPROPERLY FAILED TO QUASH THE SEARCH AND SUPPRESS THE EVIDENCE.

The Sixth Circuit side stepped established precedent in order to uphold this search. A search warrant executed in flagrant disregard of the limitations of the search warrant requires suppression of **all** of the evidence. United States v Henson, 848 F.2d 1374, 1383 (6th Cir. 1988), cert. denied, 109 S.Ct. 784 (1989); United States v Medlin, 842 F.2d 1194, 1199 (10th Cir. 1988) ("Medlin II"); United States v Lambert, 771 F.2d 83, cert. denied, 474 U.S. 1034, (6th Cir. 1985); United States v Heldt, 688 F.2d 1238, 1239 (D.C. Cir. 1981), cert. denied sub nom. Hubbard v United States, 456 U.S. 926 (1982);

and United States v Rettig, 589 F.2d 418, 423 (9th Cir. 1978).

> **When law enforcement officers grossly exceed the scope of a search warrant in seizing property, the particularity requirement is undermined and a valid warrant is transformed into a general warrant thereby requiring suppression of all evidence seized under that warrant.**
> ....
> The government overlooks the fact that the objective reasonableness exception to the exclusionary rule set forth in Leon is available only in those cases in which the officers act objectively reasonable in executing a search warrant which is subsequently found to be invalid.

Medlin II, at 1199 (emphasis added).

In finding that the police seized numerous items outside the scope of the search warrant, the Sixth Circuit explained that **"We agree that the record establishes that some of the officers apparently engaged in egregious misconduct while searching the Baldori home."** (App. A, p. 15) (emphasis added). The Sixth Circuit also found, without expressly stating,

that the police acted in "flagrant disregard" of the limiting terms of the search warrant:

> The search warrant return indicates that the officers seized three computers, two printers, a modem, a fax machine, and several disk drives. **The language of the search warrant does not appear to support the seizure of any of these items.**
>
> Second, the officers seized $1,030 in Canadian currency. . . . **The warrant authorized the seizure of only U.S.** currency.
>
> * * *
>
> Detective Early testified that most of the records he seized, some dating back to 1969, were taken in an attempt to establish Baldori's net worth. The warrant did authorize seizure of records showing purchases made with marijuana proceeds, but did not authorize the officers to seize all of Baldori's financial records to establish his net worth. **The intentional seizure of those documents goes far beyond the terms of the warrant.**
>
> Fourth, the officers seized more than 30 intimate photographs and slides of Boyle. **The government concedes that the photos and slides are not covered by the warrant.** * * * Two officers

> have been charged in state court with illegally taking items during the search.

(App. A, pp. 12-15) (emphasis added).

Clearly, Sissler, as an overnight guest, has an expectation of privacy, and, therefore, the same Fourth Amendment protections as his host in the Baldori home. Minnesota v Olson, 495 U.S. 91 (1990); United States v Osorio, 949 F.2d 38, 41 (2d Cir. 1991). The Sixth Circuit attempts to limit the scope of Sissler's "standing" to challenge the search.

> Unlike the defendants in Medlin and Rettig, however, **Sissler's rights were not violated by the misconduct**. All of the property seized from him was within the scope of the warrant. **Thus, even if we were to find that the officers searched Baldori's home in flagrant disregard of the warrant's scope, we would find that the officers did not violate Sissler's rights.** We believe that deterrence would not be served by allowing Sissler to benefit from the alleged violation of Baldori's and boyle's Fourth Amendment rights. Cf. Medlin, 842 F.2d at 1200.

(App. A, p. 15) (emphasis added).

Sissler either has or does not have

standing, but not partial standing. Osorio does not distinguish, as the Sixth Circuit attempts to do, between property belonging to the defendant's host or the defendant. In Osorio, defendant Castro was the overnight guest of his host, Osorio. Castro successfully challenged the search of Osorio's premises. In suppressing the search, the 2d Circuit found that, **"Castro concedes that he had no property or possessory interest in the items seized."** Osorio, at 40 (emphasis added). The court's determination was based on expectation of privacy, and found that where a defendant is an overnight guest, that defendant does have an expectation of privacy, and, therefore, standing to challenge the search, not merely part of the search. Osorio, at 42.

Additionally, the Sixth Circuit's attempt to distinguish Medlin and Rettig, both of which suppressed all the evidence based on a search exceeding the intended scope of the

warrant, are misplaced. In Rettig, the police obtained a state search warrant based on an affidavit that failed to disclose the earlier denial of a federal search warrant and failed to disclose the real purpose of the search warrant. Rettig, at 421. The function of the judge reviewing an application and issuing a search warrant is lost if the police fail to disclose all the material facts.

> By failing to advise the judge of all the material facts, including the purpose of the search and its intended scope, the officers deprived him of the opportunity to exercise meaningful supervision over their conduct and to define the proper limits of the warrant.

Rettig, at 422.

> A judicial officer cannot perform the function of issuing a warrant particularly describing the places to be searched and the things to be seized, and of supervising the proper return of such process, where the police fail to disclose an intent to conduct a search the purposes and dimensions of which are beyond that set forth in the affidavits.

Rettig, at 423.

Here, the police did not disclose all the material facts or the real purpose of the search and its intended scope to the magistrate issuing this search warrant, including, inter alia, that the local Asset Seizure Unit and the I.R.S. intended to "piggy-back" this federal search warrant in order to search for and seize property for which they had no probable cause and could not obtain their own search warrant. The Sixth Circuit correctly found that the execution of this search warrant intentionally went far beyond the scope of the search warrant.

> We find the record establishes that the agents did not confine their search in good faith to the objects of the warrant, and that while purporting to execute it, they substantially exceeded any reasonable interpretation of its provisions. As interpreted and executed by the agents, this warrant became an instrument for conducting a general search.

Rettig, at 423. The police in this case obtained a search warrant from the federal magistrate intentionally and deceptively

failing to disclose their intended and scope and purpose. The police, then used the search warrant merely as a key to enter the Baldori premises and proceed to conduct a general search.

The Medlin court was clear that the Federal authorities had the obligation of monitoring and supervising the activities of the invited agencies during the execution of the federal search warrant.

> The ATF agents could have decided not to bring Deputy Carter along as an assistant on their search, but having exercised their prerogative to do so **the ATF agents could have, and should have, monitored Carter's activities to ensure that the federal search was not tainted by an unrelated "fishing expedition."**

Medlin, at 1200 (emphasis added). As a result of this search, which flagrantly exceeded the scope of the federal warrant, requires the suppression of all evidence seized under the warrant.

> . . . even **evidence which is properly seized pursuant to a warrant must be suppressed if the officers executing the warrant**

> **exhibit "flagrant disregard" for its terms.**
>
> * * *
>
> When law enforcement officers grossly exceed the scope of a search warrant in seizing property, the particularity requirement is undermined and **a valid warrant is transformed into a general warrant thereby requiring suppression of all evidence seized under the warrant.**

Medlin, at 1999 (emphasis added).

The Sixth Circuit incorrectly found that Sissler's Fourth Amendment rights were not violated since his property was within the scope of the warrant. Sissler's standing entitled him to challenge the search. Since the police failed to disclose material facts and the intended scope and purpose of the search, and since the police intentionally seized property far beyond the scope of the warrant, all the property must be suppressed.

> Unfortunately, the ATF agents' failure to prevent the flagrant disregard for the terms of their search warrant, a failure for which they are accountable, **renders all the fruits of the firearms search**

inadmissible in evidence against Medlin.

Medlin at 1200 (emphasis added).

IV. THE SIXTH CIRCUIT, BASED ON AN INCORRECT ASSUMPTION OF FACTS, ERRED IN FINDING THAT SISSLER'S FIFTH AMENDMENT RIGHTS WERE NOT VIOLATED

The Sixth Circuit incorrectly found that Sissler ". . . concedes * * * that he agreed to talk with the officers before he made the incriminating statements." (App. A, p. 15). The circumstances of Sissler's interrogation were unique. Sissler was interrogated in the recording studio while Baldori, his friend and attorney, was being interrogated a few feet away in a glass enclosed, sound-proof control booth within Sissler's view. Sissler was advised of his Miranda rights while observing his attorney talking to the police, not knowing that Baldori was intentionally not advised of his Miranda rights and was refused his repeated requests to call an attorney.

Although the case of United States v. Jones, 641 F.2d 425 (6th Cir. 1981), involved

the issue of a valid consent to search, the Sixth Circuit focused on whether "the consent was uncontaminated by duress, coercion, or trickery." Id, at 429. The court held that "the only credible inference [is that the consent to search] was granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right." Id. The court noted that there were several "police officers at the scene, all of them armed, two with shotguns drawn and others with pistols drawn." Id. Similarly, in United States v. Talkington, 843 F.2d 1041 (7th Cir. 1988), another case involving a consensual search, the court noted that, as in the instant case, "[t]he district court apparently did not focus on many potentially coercive factors." Id. Although the issue before this Court is the consent to waive the right to counsel and to remain silent, not to a search, the reasoning should be the same. The coercive factors imposed on Sissler were,

essentially, ignored by the district court and the Sixth Circuit.

Sissler maintains that, prior to waiving his Miranda rights, he inquired whether he should have an attorney. The police responded by indicating that would never have another opportunity to help himself as he did at that moment, in an effort to trick him into waiving his rights. Several courts have held that similar inquiries are an equivocal assertion of a defendant's right to cut-off questioning and have counsel.

The Eleventh Circuit held in Towne v. Dugger, 899 F.2d 1104 (1990) held that the defendant's question to the officer, "Officer, what do you think about whether I should get a lawyer?" was an equivocal request for an attorney and the officers had a duty to clarify that issue prior to continuing questioning. In Towne, the defendant stated he made a request for an attorney, but was told by the officers that if he went that route,

"he would throw the book at him." Towne, at 1105.

In Owen v. Alabama, 849 F.2d 536 (11th Circuit 1988), the court held that "I think I'll let y'all appoint me one" was an equivocal request for counsel. In Owen v. State, So. 2d; 46 Cr.L. 1536 (1990), the defendant was freely confessing to several murders. In response to a question later in the interview, the defendant stated, "I'd rather not talk about it." The officers merely continued questioning as to other topics. The court held that the defendant made at least an equivocal assertion of his right to cut-off questioning and advised:

> Instead of exploring whether this was an invocation of the right to remain silent or merely a desire not to talk about the particular detail, the police urged him to clear matters up . . . It was error for the police to urge appellant to continue his statement.

The concurring opinion goes on to state:

> Later, in Michigan v. Mosley, 423 U.S. 96, 104 (1975), the Court stated that an individual's right to cut off questioning must be "scrupulously honored". Here, it was not. [Owen, 46 Cr.L. at 1537]

These statements under the reasoning of the 11th Circuit in Towne, supra, and the Florida Supreme Court in Owen, supra, and Michigan v. Mosley, supra, were equivocal assertions of the right to an attorney and right to silence. Sissler's statements, therefore, should be suppressed and ruled inadmissible.

REASONS FOR GRANTING THE WRIT

This Court should grant Certiorari in order to determine an important question of law as to whether a defendant's Sixth Amendment right should prevail over the Fifth Amendment rights of the chief evidence officer and other police witnesses at a pretrial suppression hearing.

This Court should also grant Certiorari to determine an important question of law as

to whether an "anticipatory" search warrant is valid where the contraband that is neither "on a sure course to its destination " or even in the control of the police involved, and where the probable cause is based on a series of contingencies outside the control of the police.

This Court should also grant Certiorari to determine an important question of law as to whether the evidence seized as a result of a search executed in flagrant and egregious disregard of the limiting terms of the federal warrant should be suppressed, especially where the police failed to disclose material facts and their intended scope and purpose of the search to the issuing magistrate.

This Court should also grant Certiorari to determine an important question of law as to whether a defendant's Fifth Amendment Rights are violated when (s)he is interrogated within view of his co-defendant attorney talking to the police not knowing that the

police intentionally failed to advise him of his Miranda rights, and where the police response to a defendant's inquiry of whether (s)he should have an attorney was that (s)he would never be in a better position to help yourself.

CONCLUSION

> It is sometimes said that error "crept" into the trial of a lawsuit. Not so in the case at bar. It marched in like an army, with banners, and trumpets.

State v. Tolson, 248 Iowa 733, 82 N.W.2d 105 (1957).

The record in this case presents a full spectrum of police abuse and misconduct and implicates virtually every principle underlying the Fourth, Fifth, and Sixth Amendments. If ever a case cried out for a judicial statement to the police that flagrant and egregious disregard for a search warrant's limitations will not be excused, this is that

case.[17]

WHEREFORE, for the above and foregoing reasons, Petitioner respectfully requests that this Honorable Court issue its writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

REID AND REID
Attorneys for Petitioner

Dated: 10/21/92

Stuart R. Shafer (P25599)
One Business & Trade Center
200 Washington Square, North
Lansing, Michigan 48933-1384
(517) 487-6566

---

[17] As Justice Holmes explained in Dodge v. United States, 272 U.S. 530, 532 (1926), "[i]f the search and seizure are unlawful as invading personal rights secured by the Constitution, those rights would be infringed yet further if the evidence were allowed to be used."

92-717

OCT 23 1992
OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOSEPH EMILE SISSLER

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME I

STUART R. SHAFER (P-25599)
REID AND REID
One Business & Trade Center
200 Washington Square, North
Lansing, Michigan 48933-1384
(517) 487-6566
Attorneys for Defendant-
Petitioner

APPENDIX - VOLUME I

TABLE OF CONTENTS

Appendix A
Decision of United States Court of Appeals (6th Cir. June, 1992) .. 1-34

Appendix B
Judge Benjamin F. Gibson's June 8, 1990 Opinion 35-55

Appendix C
Judge Benjamin F. Gibson's August 30, 1991 Opinion 56-77

Appendix D
Indictment 78-80

Appendix E
Plea Agreement 81

Appendix F
Judge Gibson's October 10, 1990 Order Reopening Proofs 82-88

Appendix G
Judgment in a Criminal Case 89-90

Appendix H
Hon. Benjamin F. Gibson's October 7, 1991 Opinion & Order.... 91-93

Appendix I
Hon. Benjamin F. Gibson's October 14, 1992 Order 94-95

Appendix J
Affidavit for Search Warrant and Search Warrant 96-111

Appendix K
FBI Agent Langkos' Testimony 112-115

APPENDIX A

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v

On Appeal from the United States District Court for the Western District of Michigan

JOSEPH EMILE SISSLER,

Defendant-Appellant.

Before: GUY and BOGGS, Circuit Judges; and RONEY, Senior Circuit Judge.*

PER CURIAM. The defendant in this marijuana possession case appeals from the district court's denial of his motion to suppress evidence obtained from a search of a home in which he was a guest. We affirm.

---

* Honorable Paul H. Roney, United States Court of Appeals for the Eleventh Circuit, sitting by designation.

I.

This appeal arises out of the execution of a warrant to search a house owned by Robert Baldori in Okemos, Michigan. Baldori, a professional musician and attorney shared the house with his girlfriend, Kelly Boyle. At the time of the search, Baldori, Boyle, and their overnight quest, the defendant Joseph Sissler, were in the house.

On January 12, 1990, four days before the search was carries out, an FBI agent obtained an anticipatory warrant from a federal magistrate to search Baldori's house. The warrant was contingent on an informant, Jim Joseph, successfully completing the delivery of police supplied marijuana to Baldori at his home, pursuant to an agreement between Joseph and Baldori. The warrant authorized the police to seize marijuana, scales, proceeds of marijuana sales in the form of U.S. currency, records of marijuana transaction, records of assets purchased with marijuana proceeds,

safety deposit box keys, and phone numbers of marijuana suppliers and customers.

Joseph delivered 88 pounds of marijuana to Baldori late on the evening of January 15, 1990. While Joseph was inside, Sissler arrived in a car bearing Virginia tags and entered the house. Neither the officers nor Joseph were expecting anyone to arrive, and Sissler was unknown to the authorities. Joseph emerged from the house shortly after midnight and confirmed that he had delivered the marijuana to Baldori. He had not spoken with Sissler.

Approximately 24 local and federal officers then executed the warrant and searched the house for more than 5 hours. The police combed the entire house and opened containers, including Sissler's briefcase and overnight bag. The officers recovered the marijuana delivered by Joseph, seized large amounts of currency from Sissler's overnight bag and elsewhere, and arrested Baldori and

Sissler. They also seized records belonging to Baldori. The seizure included 500 computer disks, as well as three personal computers, two printers, and a modem. Some of the local officers also seized sexually explicit photographs and slides of Kelly Boyle.

An IRS agent and officers from a local forfeiture unit also participated in the search. They seized records, some dating back to 1969, in an apparent attempt to determine Baldori's net worth. The forfeiture unit also seized a fax machine.

During the search, the officers separated Sissler and Baldori, warned Sissler of his Miranda rights, and questioned him. In response to these questions, Sissler indicated that he had intended to use the cash found in his overnight bag to buy marijuana from Baldori.

One week later, a federal grand jury charged Sissler with attempting to possess marijuana with intent to distribute. He moved

to suppress his statement and the evidence seized from Baldori's house. After the district court denied the motion, Sissler entered a conditional guilty plea to the attempted possession charge.

Meanwhile, state authorities were investigating the conduct of some of the local officers who has participated in the search. This investigation led a state prosecutor to charge two of the officers with criminal offenses.

Sissler moved to reopen the suppression hearing, and the district court granted the motion, limiting the hearing to the issue of whether of officer had flagrantly disregarded the scope of the warrant. At the reopened suppression hearing, Sissler called several of the officers who had been charged or were being investigated by the state prosecutor. Each of these officers refused to testify about his role in the search and invoked the Fifth Amendment privilege against self-

incrimination.

At the conclusion of the reopened suppression hearing, the district court again denied Sissler's motion to suppress the fruits of the search. This appeal followed.[1]

II.

Sissler first argues that his Confrontation Clauses rights were violated when several of the officers who had participated in the search invoked the privilege against self-incrimination when Sissler called them to testify during the suppression hearing. He maintains that the officers' refusal to testify deprived him of his right to confront adverse witnesses.

As an initial matter, the government concedes that Sissler has a Confrontation Clause right to examine any witness who gives "damaging" testimony against him, even if

---

[1] After denying Sissler's renewed motion to suppress, the district court sentenced Sissler to 57 months imprisonment but allowed him to continue his bond pending the outcome of this appeal.

Sissler called the witness to testify. See Chambers v Mississippi, 410 U.S. 248, 298 (1973). However, the government points out that the officers who asserted the privilege gave no testimony of any kind against Sissler at the suppression hearing.

Even if we were to agree with Sissler that the officers who declined to answer the questions were somehow witnesses against him, we would not hold that their silence violated his Confrontation Clause rights. The Sixth Amendment does not compel the government to produce all witnesses competent to testify, see Unites States v Moore, 954 F.2d 379, 381 (6th Cir. 1992), nor does it compel government witnesses who do testify to waive their testimonial privileges, see McCray v Illinois, 386 U.S. 300, 314 (1967).

Finally, we observe that the Supreme Court has rejected Confrontation Clause challenges to the use of incompetent testimony during suppression hearing. See United States

v Matlock, 415 U.S. 164, 175 (1974); McCray, 386 U.S, at 314; see also United States v Boyce, 797 F.2d 691, 693 (8th Cir. 1986) ("the right of confrontation does not apply to the same extent at pretrial suppression hearing as it does at trial"). The Court has repeatedly explained that "[t]he right to confrontation is basically a trial right." Barber v Page, 390 U.S. 719, 725 (1968).; see also Pennsylvania v Ritchie, 480 U.S. 39, 52 (1987) (Powell, J.); California v Green, 399 U.S. 149, 157 (1970).

Accordingly, we hold that Sissler's Sixth Amendment rights were not violated when several officers invoked the Fifth Amendment privilege against self-incrimination during the suppression hearing.

III.

Sissler argues that the search violated his rights under the Fourth Amendment. Specifically, he contends that: (1) probable cause was absent at the time the magistrate

issued the anticipatory search warrant; (2) the police failed to execute the warrant within the time specified; (3) the search warrant did not authorize the police to open his overnight bag and briefcase; (4) the search warrant was unconstitutionally overbroad; and (5) the police flagrantly disregarded the terms of the warrant and conducted a general search.

We must first determine whether Sissler has standing to raise all of these arguments. The district court concluded that Sissler was an overnight guest and, as such, has standing to challenge the search of the Baldori home. The government concedes that Sissler was an overnight guest and has standing to challenge the search of his personal belongings and his "guests quarters" at the Baldori residence, but argues that he lacks standing to attack the search of the rest of the house.

The Supreme Court recently considered the Fourth Amendment standing of overnight guests

in Minnesota v Olson, 495 U.S. 91 (1990). In Olson, the Court held that the defendant's "status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepare to recognize as reasonable." Id., 495 U.S. 96-97. The Court further elaborated:

> That the guest has a host who has ultimate control of the house is not inconsistent with the guest having a legitimate expectation of privacy. The houseguest is there with the permission of his host, who is willing to share his house and his privacy with his guest. It is unlikely that the guest will be confined to a restricted area of the house; and when the host is away or asleep, the guest will have a measure of control over the premises.

Id. at 99 (Emphasis added).

Olson contains no language to support the governments argument that an overnight guest obtains a privacy interest only in his guest quarters.[2] On the contrary, a natural reading

---

[2]The governments reliance on Rakas v Illinois, 439 U.S. 128 (1978), is misplaced. In Rakas, the Court held that a car passenger has no legitimate expectation of privacy in

of Olson suggest that an overnight guest's privacy interest in a home is not limited unless the host restricts the guest's movement. See United States v Osorio, 949 F.2d 38, 41 (2d Cir. 1991) (holding that overnight guests had standing to challenge search of entire premises absent proof that host restricted guest's movements).

Since the government does not point to any evidence that Baldori limited Sissler's movement about the house, we conclude that Sissler had standing to challenge the search of the entire house. We now turn to Sissler's specific Fourth Amendments arguments.

A.

Sissler maintains that the magistrate

---

the car's glove compartment. Id. at 148-89. In dicta, the Court explained that a "casual visitor" to a home has no standing to challenge the search of the basement he has never seen. Id. at 142. In Olson, the Court carefully explained its holding in Rakas and held that an overnight guest, unlike a casual visitor on the premises, has a privacy interest in his host's home. Olson, 495 U.S. at 97-89.

lacked probable cause when he issued the anticipatory search warrant four days before Joseph delivered the marijuana to Baldori's home. This claim requires us to review the information available to the magistrate at the time he issued the warrant.

On January 10 and 11, Joseph, wearing a transmitting devise and a tape recorder, met with Baldori to negotiate the sale of approximately 100 pounds of marijuana. On January 11, Baldori told Joseph that he could not take delivery until January 15. The state police then made arrangements to provide Joseph with marijuana for delivery on January 15. On January 12, FBI Agent Dennis Langkos sought and obtained the anticipatory warrant at issue in this appeal. Langkos' affidavit contained the information obtained from Joseph, as well as other information. The warrant was expressly conditional on Joseph successfully delivering marijuana to the Baldori home. Sissler argues that no probable

cause for the search existed until Joseph actually delivered the marijuana late on the evening of January 15. He maintains that the issuance of the anticipatory warrant allowed the authorities to manufacture probable cause after obtaining the warrant.

Sissler relies heavily on the decision in United States v Hendricks, 743 F.2d 653, 654-55 (9th Cir. 1984), cert. denied, 470 U.S. 1006 (1985), in which the Ninth Circuit stated that an anticipatory warrant is valid only if the contraband is on a "sure course" to the place to be searched. The court held that the suitcase containing cocaine was not on a sure course to the defendant's home at the time the warrant was issued because there was no assurance that the defendant would pick up the suitcase at the airport or that he would take it home if he did pick it up. Id. At least two other circuits have adopted the sure course standard employed by the Ninth Circuit. See United States v Nixon, 918 F.2d 895, 903

n.6 (11th Cir. 1990); United States v Goodwin, 854 F 2d. 33, 36 (4th Cir. 1988);

The government points to United States v Garcia, 882 F.2d 699, 702-03 (2d Cir.), cert. denied, 493 U.S. 943 (1989), in which the Second Circuit upheld an anticipatory warrant contingent upon an informant's controlled delivery of cocaine to the defendant's home. The court held that an anticipatory warrant is valid in such a situation so long as there is probable cause to believe that the contraband will be on the premises at the time the search is executed. Id., 882 F.2d at 703.

We had earlier reached the same conclusion at the Garcia court in a case involving the mailing of a package containing heroin. United States v Lowe, 575 F.2d 1193 (6th Cir.), cert denied, 439 U.S. 869 (1978). In Lowe, we upheld the use of an anticipatory warrant so long as "there is probable cause to believe that [the contraband] will be there when the search warrant is executed." Id, 575

F.2d at 1194.

We need not decide whether the police must show that the contraband is on the sure course or whether they need merely establish probable cause to believe that it will be at the place to be searched. The anticipatory warrant in this case is valid under either standard.

At the time the warrant was issued, the police controlled the marijuana that was eventually delivered to Baldori. Joseph, an informant working for the government, had arranged to deliver it to Baldori's home on January 15. These undisputed facts support a finding that the marijuana was on a sure course to Baldori's home at the time the warrant was issued. As the Ninth Circuit acknowledged in Hendricks, a controlled delivery by the government can satisfy the requirement that the contraband be on a sure course to the place to be searched. 743 F.2d

at 655.[3]

We find that there was sufficient assurance that marijuana would be delivered to Baldori's home to satisfy both the sure course and probable cause standards. Accordingly, we hold that the magistrate validly issued the warrant.

B.

Sissler next argues that the authorities failed to execute the warrant within the time specified. The warrant commanded the officers to search Baldori's home "upon the delivery of marijuana." (App 680). Sissler complains that the agent did not execute the warrant until

---

[3]Sissler argues that the sure course requirement is satisfied only in the contraband is in the mail. The Hendricks court listed a mailing as an example of a controlled delivery satisfying the sure course requirement. 743 F.2d at 655. The court never suggested that the warrant would have been valid only if the suitcase had been mailed to Hendricks; instead, the warrant was invalid because there was no assurance that Hendricks would pick up the suitcase and return to his home. Id By contrast, the affidavit for the warrant in this case stated that Joseph would deliver the marijuana to Baldori's house.

more that two hours after Joseph arrive with the marijuana.

The government points out that the warrant was not executed for several hours because the officers waited until Joseph left the house before executing the warrant. The officers could not be sure that delivery actually had occurred until Joseph came out without the marijuana. The officers executed the warrant shortly after Joseph emerged. Accordingly, we find that the officers executed the warrant "upon the delivery" of the marijuana in a timely manner.

C.

Sissler argues that the officers lacked probable cause to open his briefcase and overnight bag. The officers found the briefcase in Baldori's recording studio and the overnight bag in the office. Inside the overnight bag, the officers discovered prescription medication in Sissler's name and $130,000 in cash. The briefcase contained

$1,120 in cash.

A warrant that authorized officers to search a home also authorized them open containers that might contain items which in the scope of the warrant. United States v Ross, 456 U.S. 798, 821 (1982); United States v Calarco, 668 F.2d 920, 921 (6th Cir. 1982). However, "special concerns may arise when visitors are present on the premises." United States v Gray, 814 F.2d 49, 51 (1st Cir. 1987).

In Gray, the First Circuit refused to exclude evidence found in a jacket during the execution of a search warrant because the police did not know that the jacket belonged to a visitor when they began to search it. Id.2 In this case, the district court found that the searching officers did not know who owned the overnight bag and briefcase until after they had opened them. Since there is no evidence that this factual finding is clearly erroneous, we concluded that the officers did

not violate the Fourth Amendment by opening Sissler's bag and briefcase.[4]

Even if we were to find that the officers knew or should have known that Sissler owned the bag and briefcase, we would find that these items were within the scope of the warrant. An item belonging to a visitor may be searched if there is a relationship between the visitor and the place. See United States v Giwa, 831 F.2d 538, 544-45 (5th Cir. 1987) (upholding search of overnight visitor's bag); Gray, 814 F.2d at 51 (upholding search of visitors property found inside residence where a late-night drug deal had just occurred). Conversely, if there is no reason to suspect that a person found on the premises is

---

[4]Sissler argues that the officers should have realized that the overnight bag was his and stopped searching when they found a pill bottle bearing his name. Even assuming that the discovery of the pill bottle would have obligated the officers to close the bag, there is no indication in the record that the officers discovered the pill bottle before they found the cash.

connected with a crime or is anything more than a casual visitor, the police may not search his or her belongings. See United States v Robertson, 833 F.2d 777, 784 (9th Cir. 1987); United States v Micheli, 487 F.2d 429, 432 (1st Cir. 1973).

Sissler arrived late at night while a major drug deal was occurring. He was an overnight guest, not a mere visitor. Therefore, he was sufficiently connected to the home to fall within the scope of the warrant.

D.

Sissler contends that the search warrant was facially overbroad. Specifically, he argues that the warrant failed to identify the items to be seized with sufficient particularity. We review search warrant overbreadth claims de novo. United States v Gahagan, 865 F.2d 1490, 1496 (6th Cir.), cert denied, 492 U.S. 918 (1989).

The Fourth Amendment requires that search

warrants describe the items to be searched for and seized with particularity so that the warrant does not authorize the police to conduct a general rummaging search. Andresen v Maryland. 427 U.S. 463, 480 (1976). The degree of specificity required varies with the type of item sought, but a description is valid if it is as specific as the circumstances permit. United States v Henson, 848 F.2d 1374, 1383 (6th Cir. 1988), cert denied, 488 U.S. 1005 (1989). At an "irreducible minimum, a proper warrant must allow the executing officer to distinguish between items that may and may not be seized." United States v Leary, 846 F.2d 592, 602 (10th Cir. 1988).

The search warrant in this case authorized the officers to search for and seize: (1) marijuana; (2) scales used to weigh marijuana; (3) proceeds of marijuana sales in the form of U.S. currency; (4) records of marijuana transactions; (5) records of assets

purchased with the proceeds of marijuana transactions; (6) safety deposit box keys; and (7) phone and address books containing names, addresses, and phone numbers of marijuana customers and suppliers.

Sissler argues that the third, fourth, and fifth items are overbroad. He points out that the warrant contained no guidelines to tell the executing officers how to distinguish currency that come from marijuana transactions from the currency. Consequently, the police seized all the currency on the premises, including $130,000 from Sissler's bag, $1,200 from Sissler's briefcase, and $550 from Sissler's money belt, $143 from Sissler's wallet, and more that $17,00 from other locations in the house. [5]

Although the seizure of all the currency is troubling, Sissler does not explain how a

---

[5]The seizure included $1,030 in Canadian currency which belonged to Boyle. The government concedes that seizure of the Canadian currency was beyond the scope of the warrant.

more detailed warrant would have allowed the officers to distinguish marijuana proceeds from other currency. Since there was probable cause to believe that there would be marijuana proceeds on the premises and since a more specific description was not possible, we concluded that the description of the currency in the warrant was not overbroad. See Henson, 848 F.2d at 1383.

Sissler argues that the descriptions of records of marijuana transactions and assets purchased with marijuana proceeds are overbroad. The affidavit supporting the warrant provided evidence that Baldori had been selling marijuana since early 1989, but the warrant did not command the officers to limit their search to recent records. The police seized some of Baldori's records dating back more than 20 years.

The absence of a time limitation does not make a warrant overbroad if the magistrate is unable to specify an appropriate time frame.

See United States v Shilling, 826 F.2d 1369 (4th Cir. 1987), cert denied, 484 U.S. 1043 (1988). However, when there is information available to limit a search for records, the warrant is overbroad if it contains no such limitations. See United States v Cardwell, 680 F.2d 75, 78 (9th Cir. 1982) (reversing conviction where overbroad warrant contained no time limitation).

Assuming, without deciding, that the records potion of the warrant was facially overbroad, the normal remedy is to sever that potion of the warrant for the portions that do pass constitutional muster. United States v Blakeney, 942 F.2d 1001, 1027 (6th Cir. 1991), cert denied, ___ U.S. ____, 112 S. Ct. 881 (1992); Cardwell, 680 F.2d at 78. Since none of the records seized pertained to Sissler, the suppression of items seized pursuant to the arguably overbroad portions of the warrant would provide him with no relief. Sissler's requested remedy, suppression of all items

seized in the search, would be appropriate only if the entire warrant were overbroad. Cardwell, 680 F.2d at 78-79. Accordingly, we find that the warrant was not facially overbroad as to the evidence to the introduced against Sissler.[6]

E.

Sissler and amicus, the American Civil Liberties Union, contend that the evidence from the search must be suppressed because the police exceeded the terms of the warrant by indiscriminately seizing items that were outside the scope of the warrant. Sissler and the ACLU argues that the officers conducted the search with flagrant disregard for the

---

[6]Sissler also argues that the search was a pretext to allow agents from the IRS and the state forfeiture unit to enter the home. Sissler cites to no authority supporting his claim that the Fourth Amendment bars state police and IRS agents from accompanying FBI agents during the execution of a federal search warrant. However, those accompanying agents are bound by the terms of the search warrant.

limitations of the warrant.[7] This claim requires us to review in some detail the items that were seized from the Baldori house.

We begin with the electronic equipment. The search warrant return indicates that the officers seized three computers, two printers, a modem, a fax machine, and several disk drives. The language of the search warrant does not appear to support the seizure of any of these items.

The government argues that the officers needed to seized the computers because drug records could have been stored in their internal memories. Accepting this contention as true, the government does not explain why

---

[7]The ACLU also claims that some of the officers were completely ignorant of the warrant's limitations and that there ignorance converted the search into an unconstitutional general search. See United States v Heldt, 668 F.2d 1238, 1261-62 (D.C. Cir. 1981), cert denied, 456 U.S. 926 (1982). Our review of the record reveals that, although some of the officers has an expansive view of the search, there is no evidence that the officers were completely ignorant of the contents of the warrant.

the police also needed to seize printers, modems, and disk drives.

As to the fax machine, the government maintains that it was not responsible for the seizure because a state forfeiture team seized it. We disagree. Since the local officers entered the house under the federal warrant and had no independent authority to seize items not covered by the federal warrant, we must consider everything seized as part of the same search. See United States v Medlin, 842 F.2d 1194, 1197 (10th Cir. 1988). We also observed that a federal agent prepared the warrant return that listed the fax machine.

Detective Early, from the state forfeiture unit, testified that he seized the fax machine because the unit was interested in any item that appeared to be new. A grand piano and a stereo were spared because them appeared to be old.

Second, the officers seized $1,030 in Canadian currency. Boyle testified that she

had earned the money working in Windsor, Ontario. The warrant authorized the seizure of only U.S. currency.

Third, the officers seized records that fell outside the scope of the warrant. The testimony of officers who participated in the search indicated that the house was cluttered with poorly organized records and that the officers seized only 10 percent of the records.

We agree with the government and the district court that, under those circumstances, the agents need not read each individual document to determine whether it falls within the warrant. See Henson, 848 F.2d 1383. It is therefore inevitable that the officers will seize some documents that are outside the scope of the warrant, particularly since Baldori kept voluminous records relating to his legal and musical careers on the premises.

Detective Early testified that most of

the records he seized, some dating back to 1969, were taken in an attempt to establish Baldori's net worth. The warrant did authorize seizure of records showing purchases made with marijuana proceeds, but did not authorize the officers to seize all of Baldori's financial records to establish his net worth. The intentional seizure of those documents goes far beyond the terms of the warrant.

Fourth, the officers seized more than 30 intimate photographs and slides of Boyle. The government concedes that the photos and slides are not covered by the warrant. The officer or officers who took the slides and photos did not list them on the search warrant return. Two officers have been charges in state court with illegally taking items during the search.[8]

---

[8]Sissler's brief repeatedly calls attention to the fact that some of the local police officer held a slide show at the police station to display Boyle's nude photos. While we agree that this conduct is outrageous, it

We observe that the evidence incriminating Sissler, the cash found in his overnight bag and briefcase, was within the scope of the warrant. In United States v Lambert, 771 F.2d 83, 93 (6th Cir.), cert denied, 474 U.S. 1034 (1985), we stated that the unlawful seizure of items outside of the scope of the warrant normally does not require the suppression of evidence lawfully seized. However, we went on to explain that "[a] flagrant disregard for the limitations of a search warrant might make an otherwise valid search an impermissible general search requiring the suppression of all evidence seized during the search." Id, 771 F.2d at 93.

The government cites several cases in which courts have found that officers who exceeded the scope of a warrant did not act in

---

is irrelevant to our analysis. The slides are relevant only because there were seized illegally during the search.

flagrant disregard to the warrant.[9] Sissler points out that in those cases the officers seized items, typically records, not covered by the warrant while searching for similar items that were within the scope of the warrant.

Sissler argues that the facts in this case are similar to those considered by the Tenth Circuit in Medlin, In Medlin, federal officers obtained a warrant to search for firearms in the defendant's home. Local officers accompanied the federal officers and seized 667 items of allegedly stolen property.

---

[9]See United States v Lambert, 887 F.2d 1568, 1572 (11th Cir. 1989) (inadvertent seizure of records unrelated to drug trafficking); Henson, 848 F.2d at 1383 (inadvertent seizure of records to fraud scheme); Shilling, 826 F.2d at 1369 (seizure of file cabinet of documents, only some of which were relevant) United States v Crozier, 777 F.2d 1376, 1381 (9th Cir, 1985) (inadvertent seizure of irrelevant records); United States v Whitten, 706 F.2d 1000, 1010 (9th Cir. 1983) (seizure of boxes of letters and documents taken for later review), cert denied, 465 U.S. 1100 (1984) Heldt, 668 F.2d 1260-69 (seizure of documents not covered by warrant).

The Tenth Circuit upheld the suppression of all evidence, including the firearms, concluding that the officers flagrantly disregarded the limitations of the warrant by searching for and seizing the allegedly stolen property. Medlin, 842 F.2d at 1199; see also United States v Rettig, 589 F.2d 418, 423 (9th Cir. 1978) (ordering suppression of all evidence where police conducted general search).

We agree that the record established that some of the officers apparently engaged in egregious misconduct while searching the Baldori home. Unlike the defendants in Medlin and Rettig, however, Sissler's rights were not violated by the misconduct. All of the property seized from him was within the scope of the warrant. Thus, even if we were to find that the officers searched Baldori's home in flagrant disregard of the warrant's scope, we would find that the officers did not violate Sissler's rights. We believe deterrence would

not be served by allowing Sissler to benefit from the alleged violation of Baldori's and Boyle's Fourth Amendment rights. Cf. Medlin, 842 F.2d at 1200 (finding exclusion of legally seized weapons serves deterrence where officers violated defendant's rights by illegally seizing hundreds of items). Accordingly, we affirm the district court's denial of Sissler's motion to suppress.

IV.

Sissler finally argues that the statement he made to the officers must be suppressed. Sissler concedes that the interrogating officers read him Miranda right, that the signed a consent form acknowledging his rights, and the he agreed to talk with the officers before he made the incriminating statement. The testimony of the interrogating officer indicates that Sissler engaged in a wide-ranging conversation for approximately two hours until he indicated that he wished to speak with an attorney. The interrogation

then stopped.

We find no evidence in the record to support Sissler's claim that the officers coerced him into making the incriminating statements. Instead, the evidence indicates that Sissler voluntarily waived his Miranda rights and agreed to talk with officers.[10] We affirm the district court's refusal to suppress Sissler's statements.

AFFIRMED.

---

[10]Sissler appears to argue that this statements were involuntary because he was ill at the time. However, a statement is involuntary for constitutional purposes only if it is the product of official coercion Colorado v Connelly, 479 U.S. 157, 167 (1986).

APPENDIX B

APPENDIX B

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

File No. 1:90-CR-12

Hon. Benjamin F. Gibson

v.

JOSEPH EMILE SISSLER,

Defendant.

OPINION

INTRODUCTION

This matter is before the Court as a result of the defendant's motions to suppress incriminating statements and contraband. After conducting hearings regarding these motions on March 15, April 20, and May 24, 1990, the Court denies the motions for the reasons stated below.

FACTS

On January 16, 1990, at approximately 12:00 A.M., between 15 to 25 federal and local

law enforcement officials executed a federal anticipatory search warrant, see generally 2 W. LaFave, Search and Seizure § 3.7(b) (2d ed. 1987), at the home and recording studio of Robert Baldori in Okemos, Michigan. The warrant authorized the search of the premises and its surrounding cartilage for marijuana, marijuana paraphernalia, record of drug transactions and proceeds from marijuana sales in the form of U.S. currency. As a result of the search, a number of items, including approximately 88 pounds of marijuana, were seized by the police.

Present at the time of the raid was the defendant, John Sissler, a resident of Virginia and an overnight guest of Baldori's. During the course of the search, at least two officers searched an overnight travel bag belonging to defendant Sissler. The search of the overnight bag revealed in excess of $130,000.00 in U.S. currency. The currency, travel bag, and a briefcase and its contents

were seized from the defendant.

The defendant was advised of his Miranda rights and executed a "boilerplate" form indicating that he understood his rights and was willing to talk to police. Government's Exh. 1. He was interviewed in the recording studio located on the first floor of the house by two officers. Aside from a brief period of time following the initial entry to the residence, the defendant was not handcuffed. From the testimony given at the suppression hearing, the interrogation of the defendant was conducted in a gentlemanly fashion. During the course of his interview with police, the defendant made several incriminating statements. Following the discovery of the contraband and the confession of the defendant, he was arrested for attempting to possess with the intent to distribute approximately 100 pounds of marijuana.

Sissler seeks to suppress both the

contraband and the statements. He argues that there was not probable cause to issue a search warrant. The defendant also argues that the warrant was overly broad and did not authorize the search of his briefcase and overnight bag. He also argues that the interrogating officers continued to question him despite repeated requests by him for an attorney and that his statements were involuntary and the result of police coercion.

ANALYSIS

1. SEARCH OF THE BALDORI RESIDENCE

The defendant argues that the warrant authorizing the search of the Baldori residence was not supported by probable cause.[1] He also argues that even if the search warrant was supported by probable cause, it was drafted in an overly broad manner and did not authorize the search of his overnight bag. The Court rejects both contentions.

A. Probable Cause

In Illinois v. Gates, 462 U.S. 213 (1983), the Supreme Court rejected the "two-pronged" test of Aguilar-Spinelli[2] in favor of a "totality-of-the-circumstances" approach to determine the reliability of the information given by an informant. Id. at 238. See Spinelli v. United States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964). Under Gates, the task of the issuing magistrate is to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and the "basis of knowledge" of the informant, there is a fair probability that evidence of a crime will be found in the place to be searched. Gates, 462 U.S. at 238. Furthermore, a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. Id. at 238-39. After reviewing the affidavit in

support of the request for a search warrant, the Court concludes that the magistrate had probable cause to issue the warrant.

The affidavit clearly establishes that the informant clearly had first-hand, personal knowledge of Baldori's involvement with marijuana. It states that the informant, who appears to be some sort of "middleman" or marijuana broker, had previously sold large amounts of marijuana to Baldori. The informant further states that all of the marijuana he sold to Baldori during 1989 came from the same supplier. The informant states that he would be contacted by his supplier whenever he had marijuana available. The informant would then pass this information on to Baldori and arrange a sale. According to the informant, the marijuana purchased by Baldori had always been shipped to the Lansing area by automobile and that the driver was employed by his supplier. Furthermore, once the marijuana reached the Lansing area, he

would take possession of it and make further delivery arrangements with Baldori. Finally, the Court notes that at the time these statements were made by the informant, a shipment of marijuana which the informant says was intended to be delivered to Baldori had been seized by police authorities in the Little Rock, Arkansas area and the informant's supplier and a driver associated with the supplier had been arrested.

The information contained in the affidavit also clearly establishes the informant's truthfulness. The Court notes that the informant advised Baldori in a conversation following the arrests in Little Rock, Arkansas that marijuana was available from his regular supplier.[3] The affidavit also states that the two men, in a conversation taped by police officials, later discussed the terms of the sale and made arrangements for the delivery of the marijuana to Baldori once it reached the Lansing area.

This chain of events and conduct of Baldori is consistent with the other information provided by the informant and establishes his credibility.

The Court believes that the testimony of the informant provided the magistrate with a substantial basis for concluding that there was probable cause to find marijuana at the Baldori residence once it was delivered by the informant. Id. at 238-39. Other testimony contained in the affidavit clearly establishes that there was probable cause for the magistrate to believe that marijuana paraphernalia, records, and currency from marijuana transactions would be located there as well. Therefore, the Court concludes that the magistrate properly issued the search warrant at issue in this case.

B. Overbreadth

Sissler also argues that the warrant was overly broad and did not authorize the search of his overnight bag. Defendant correctly

argues that a search warrant should contain objective standards by which the executing officers can differentiate between items subject to seizure and those objects not subject to seizure. E.g., United States v. McLaughlin, 851 F.2d 283, 285 (9th Cir. 1988). Since the warrant at issue in the present case did not contain specific guidelines to assist the officers in determining what currency found at the Baldori residence was proceeds from drug transactions, defendant argues that the warrant did not authorize the search of his overnight bag and briefcase.

The meritlessness of this argument is readily apparent. This Court cannot conceive of and the defendant does not recommend a set of guidelines that would permit police to determine whether currency found during a search is the result of a drug transaction by simply observing the money. Rather, the Court believes that the creation of such guidelines are impossible.

Moreover, the Court notes that, as a general rule, police officers are entitled to search any container found within premises lawfully subject to search if there is reason to believe that the contraband sought pursuant to the warrant can be found in the container. United States v. Ross, 456 U.S. 798, 820-21 (1982). Thus, the mere fact that the briefcase and overnight bag belonged to Sissler, rather than Baldori, does not insulate them from search or seizure under this doctrine. E.g., United States v. Giwa, 831 F.2d 538, 543-45 (5th Cir. 1987). However, if at the time the law enforcement officials executed the warrant, the circumstances were such that the officers either knew or should have known that the container searched was owned by a "mere visitor" or "passerby" otherwise unconnected with the premises, the search may be considered a personal search outside the scope of the search warrant authorizing the search

of the premises. Id. See also United States v. Robertson, 833 F.2d 777, 78384 (9th Cir. 1987): United States v. Gray, 814 F.2d 49, 51 (1st Cir. 1987); 2 W. LaFave, Search and Seizure § 4.10(b)(2d ed. 1987).

From the testimony given at the suppression hearing, the Court concludes that the police were entitled to search the briefcase and overnight bag belonging to the defendant. There is insufficient evidence before the Court to support a finding that the police should have known that these items belonged to a "mere visitor" or "passerby," a status that may not accurately describe the relationship of the defendant to the Baldori residence given the facts of the present case. Giwa, 831 F.2d at 545; Gray, 814 F.2d at 51. From the testimony at the suppression hearing, it is readily apparent that both the overnight bag and briefcase were nondescript, generic items and could not be readily identified as the defendant's prior to being searched.

Since it is reasonable to conclude that a briefcase or overnight bag could contain marijuana, currency, paraphernalia or records of marijuana transactions, the police were permitted to search these items pursuant to the search warrant.

2. REQUESTS FOR COUNSEL

The defendant maintains that the incriminating statements he made are inadmissible since he had repeatedly attempted to invoke his Fifth Amendment right to counsel. The Court concludes to the contrary.

The Fifth Amendment requires that when a person requests an attorney during a custodial interrogation, all questioning must cease until an attorney is present, unless the individual subsequently initiates the conversation with the authorities. E.g., Edwards v. Arizona, 451 U.S. 477 (1981). This principle is a "rigid prophylactic rule." Smith v. Illinois, 469 U.S. 91, 95 (1981). Courts are required "to give a broad, rather

than a narrow interpretation to a defendant's request for counsel." Michigan v. Jackson, 475 U.S. 625, 633 (1986). These standards apply even if the defendant's request for counsel is equivocal. E.g., Towne v. Dugger, 899 F.2d 1104, 1106-07 (11th Cir. 1990); Norman v. Ducharme, 871 F.2d 1483, 1486 (9th Cir. 1989). If an ambiguous request for counsel is made, further questioning must be limited to clarifying the request until it is so clarified. Towne, 899 F.2d at 1107; Norman, 871 F.2d at 1486.

At the suppression hearing, defendant Sissler testified that he made several requests for an attorney during the course of his interrogation. He stated that he inquired of the two interrogating officers at the beginning of the questioning whether they felt he needed an attorney and received no answer. Sissler also maintained that he repeated this question several times as the interrogation progressed and on each occasion received no

response. Finally, the defendant testified that he shouted in the direction of Baldori that he needed an attorney on several occasions.

However, the record of the suppression hearing indicates a lack of evidence that would corroborate the defendant's testimony. The record reveals that the two interrogating officers, during both direct and cross-examination, unequivocally maintained that no question concerning the need for counsel was asked by the defendant until the end of the interrogation. At that point, the testimony of both officers indicates that the questioning was stopped as is required by Miranda and its progeny. Their testimony also makes no mention of the defendant shouting in the direction of Baldori. Furthermore, there is no evidence in the record, aside from the testimony of the defendant, that would cast doubt on the testimony given by the officers.

Given the lack of corroborating testimony

to support the defendant's testimony and the steadfast manner in which the officers refused to contradict or retract their direct testimony on cross-examination, the Court concludes that the defendant made no attempt to invoke his right to counsel until the conclusion of the interrogation. Accordingly, the Court concludes that no violation of the defendant's Fifth Amendment right to counsel occurred as a result of his interrogation.

3. VOLUNTARINESS OF THE STATEMENTS

Sissler also maintains that his incriminating statements were involuntary and in violation of the due process clause of the Fifth Amendment. The Court concludes that the defendant's argument is meritless.

The test for voluntariness of a confession is whether, in light of the totality of the circumstances, exerted pressures have overborne the will of the accused. Schneckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973); United States v. Murphy,

763 F.2d 202, 205 (6th Cir. 1985); cert. denied. 474 U.S. 1063 (1986). A reviewing court must consider both the conduct of the police in extracting the statements from the accused and the effect that conduct had on the defendant. Miller v. Fenton, 474 U.S. 104, 116 (1985). However, in the absence of police conduct casually related to the confession, there is no basis for concluding that a confession is involuntary. Colorado v. Connelly, 479 U.S. 157 (1986).

Sissler maintains that his confession was involuntary for a number of reasons. His testimony at the suppression hearing indicates that he felt intimidated due to the large number of police officers present at the Baldori residence and the fact that a large number of these officers possessed weapons. Sissler's testimony also suggests that he felt intimidated since he had seen Baldori talking to police officials in an adjacent room. His testimony also provides that he felt ill at

the time of the interrogation and was taking a prescription medication to combat the flu. Finally, he argues that his confession was the result of implied promises of benefit for cooperating with the authorities.

The Court believes that this testimony does not establish that the confession was involuntary. The mere presence of a large number of officers and the interrogation of another suspect in an adjacent room cannot be considered police misconduct. Norman, 871 F.2d at 1487. Furthermore, the fact that the defendant may have been suffering from the flu at the time of his interrogation does not make his confession involuntary since the evidence presented to the Court at the suppression hearing indicates that the defendant was coherent and alert during his questioning. E.g., United States v. Yunis, 859 F.2d 953, 962-64 (D.C. Cir. 1988). There is simply no evidence before the Court that would even suggest that the defendant's mental faculties

were impaired as a result of his illness at the time of the interrogation. Id. Moreover, the defendant's contention that his confession was the result of an improper promise is without merit. The testimony of both the defendant and the interrogating officers indicates that the officers encouraged the defendant to continue the interrogation. On several occasions, statements suggesting that the defendant could benefit himself by cooperating with the authorities were made by the interrogating officers. However, the testimony also indicates that no specific promises of leniency were made to the defendant and that the issue of cooperation was not discussed until the defendant had already incriminated himself. Statements made by a defendant in the hope of leniency, as opposed to a promise of leniency, are not coerced. E.g., United States v. Fraction, 795 F.2d 12, 14 (3d Cir. 1986); Rachlin v. United States, 723 F.2d 1373, 1377-78 (8th Cir.

1983). Since there is no evidence of police misconduct, the Court can only conclude that the defendant's confession was given voluntarily.

Finally, the Court notes that a variety of topics were discussed during the course of the defendant's interview. The testimony of both the defendant and the interrogating officers indicates that they freely and openly discussed the Latin American policy of the Bush Administration, the war on drugs, recent magazine articles, the defendant's mother and the defendant's employment with the National Institute of Health. Furthermore, the record indicates that the defendant is a college graduate and has completed some post-graduate work. He also has had prior experience with the criminal justice system. These factors buttress the Court's conclusion that the defendant's confession was voluntary.

CONCLUSION

For the reasons stated above, the

defendant's motions are denied.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

DATED: June 8, 1990

1.Since the defendant was an overnight guest at the time the Baldori residence was raided by police, he has standing to challenge the validity of the search. See Minnesota v. Olson, 58 U.S.L.W. 4464 (Apr. 18, 1990); Rawlings v. Kentucky, 448 U.S. 98 (1980).

2.Under the Aguilar-Spinelli test, a magistrate, in determining whether the information supplied by an informant was sufficient to establish probable cause, had to independently review both the basis of the informant's knowledge and the veracity or reliability of the informant.

3.The informant slyly told Baldori that the earlier shipment of marijuana, the one seized by authorities in Arkansas, was not delivered to him because the informant's supplier rejected it due to its poor quality. The marijuana actually delivered to the Baldori residence appears to have been supplied by law enforcement officials in the Lansing area.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

File No. 1:90-CR-12

Hon. Benjamin F. Gibson

v.

JOSEPH EMILE SISSLER,
Defendant.

ORDER

As a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 8th day of June, 1990.

PRESENT: HON. BENJAMIN F. GIBSON,
U.S. DISTRICT JUDGE

In accordance with the Opinion dated June 8, 1990, IT IS HEREBY ORDERED that defendant Joseph Emile Sissler's motions to suppress are DENIED.

IT IS SO ORDERED.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

APPENDIX C

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT DIVISION OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH EMILE SISSLER,

Defendant.

File No. 1:90-CR-12

Hon. Benjamin F. Gibson

OPINION

I.

This matter is before the Court as a result of the defendant's renewed motion to suppress evidence because of alleged violations of his Fourth and Sixth Amendment rights. Following four days of evidentiary hearings and the submission of briefs by the parties, the Court denies the motion for the reasons given below.

II.

On January 16, 1990, at approximately

12:00 A.M., between 15 and 25 federal and local law enforcement officials executed a federal anticipatory search warrant, see generally 2 W. LaFave, Search and Seizure § 3.7(b) (2d ed. 1987), at the home and recording studio of Robert Baldori in Okemos, Michigan. The warrant authorized the search of the premises and its surroundings for marijuana, marijuana paraphernalia, marijuana proceeds in the form of United States currency, records of drug transactions, records of assets purchased with the proceeds of marijuana transactions, and records identifying marijuana customers and suppliers. Present at the time of the raid was the defendant, John Sissler, a resident of Virginia and an overnight guest of Baldori's. As a result of the raid, defendant Sissler was charged with one count of attempted possession of marijuana with intent to distribute in violation of Title 21 United States Code Section 846(c) and one count of interstate

travel in aid of racketeering in violation of Title 18 United States Code Section 1952(a).

After holding evidentiary hearings on March 15, April 20, and May 20, 1990, the Court denied the defendant's motion to suppress contraband seized during the raid and incriminating statements made by him. United States v. Sissler, No. 1:90-CR-12, slip op. at 12 (W.D. Mich. June 8, 1990). Following the denial of his motion, defendant Sissler entered a conditional plea of guilty to the controlled substances charge in accordance with Rule 11(a)(2) of the Federal Rules of Criminal Procedure.[1] Shortly before his scheduled sentencing, the defendant, citing newly discovered evidence, moved to re-open proofs on his suppression motion.

This motion was heard at the time originally set aside for the defendant's sentencing. The Court was informed that a number of slides and photographs of Baldori's girlfriend were taken from the premises and

were shown at "stag office parties" by some of the law enforcement officers involved in the January 16, 1990, search of Baldori's residence. It also learned that two local officers involved in the search were the subjects of a criminal investigation. This evidence led the Court to grant a hearing on the issue of whether the conduct of the officers who executed the search warrant exhibited a "flagrant disregard" for its limitations.[2]

III.

In his renewed motion to suppress, defendant Sissler has alleged a number of violations of the Fourth Amendment. Each alleged wrong is discussed separately below.[3]

A.

A criminal investigator from the Internal Revenue Service was invited by an agent of the Federal Bureau of Investigation to participate in the execution of the warrant at the Baldori residence. His presence has led the defendant

to advance the incredulous argument that the warrant served as a subterfuge for the Internal Revenue Service.[4]

The subterfuge characterization will attach to a search where the reasons given for it in the warrant and supporting documentation were merely a pretext to gain access for some other reason. 2 W. LaFave, supra § 6.7(d). A quintessential example of this principle is United States v. Sanchez, 509 F.2d 886 (6th Cir. 1975), a case cited by the defendant in support of his argument. In that case, agents from the Bureau of Alcohol, Tobacco and Firearms, acting on a tip that explosives were present at the defendant's residence, assisted local law enforcement officers in the execution of their warrant authorizing a search for controlled substances. Id. at 888. The Sixth Circuit concluded that the federal officials had impermissibly used the opportunity to assist local police in the execution of their warrant as a pretext for

conducting a search for a type of evidence separate and distinct from that sought by their local counterparts. Id. at 889.

What the defendant chooses to ignore though is that the warrant authorized the seizure of the very evidence that would interest the Internal Revenue Service. It states that records of drug transactions and records of assets purchased with marijuana proceeds can be seized. Rather than having two agencies seeking two distinctly different types of property, as in Sanchez, the present case involves several different agencies seeking the same evidence. Therefore, the Internal Revenue Service did not use its invitation as a subterfuge to impermissibly collect evidence and the Court rejects the defendant's argument to the contrary.

B.

Defendant Sissler once again maintains that the warrant was overly broad.[5] He correctly argues that a search warrant should

contain objective standards that the executing officers can use to differentiate between items subject to seizure and those not subject to seizure. E.g., United States v. McLaughlin, 851 F.2d 283, 285 (9th Cir. 1988). Since the warrant allegedly did not contain guidelines to assist the officers executing it, the defendant argues evidence seized pursuant to it should be suppressed.

The warrant executed at the Baldori residence states that marijuana, marijuana paraphernalia, marijuana proceeds in the form of United States currency, records of drug transactions, records of assets purchased with the proceeds of marijuana transactions, and records identifying marijuana customers and suppliers may be seized. Some of the property that was subject to seizure, marijuana, marijuana paraphernalia and marijuana proceeds, is by its very nature contraband. When contraband is to be seized, the fourth amendment only requires a general description

of it. 2 W. LaFave, supra § 4.6(c).

If records and other documents are to be seized, they should be described with a greater degree of specificity because of the potential for a very serious invasion into personal privacy. Anderson v. Maryland, 427 U.S. 463, 482 n.11 (1976). However, warrants simply authorizing the seizure of "records" have been upheld if it was clear what type of records were seizable and a more precise description was not possible. E.g., United States v. Storage Spaces Designated Nos. 8 & 49, 777 F.2d 1363, 1370 (9th Cir. 1985); United States v. Wuagneux, 683 F.2d 1343, 1349-50 (11th Cir. 1982), cert. denied, 464 U.S. 814 (1983). Contrary to the defendant's assertion, a warrant limiting the seizure of records to those that were created after a specific date or the like was not possible because the police had no knowledge when Baldori's alleged illicit activity commenced. When determining whether a warrant meets the

particularity requirements of the Fourth Amendment, "[o]ne of the crucial factors . . . is the information available to the government." United States v. Cardwell, 680 F.2d 75, 78 (9th Cir. 1982). Since more specific information was not available to the government, the general description "records" meets the requirements of the Fourth Amendment.

C.

Defendant Sissler argues that the police officers executing the warrant at the Baldori residence flagrantly disregarded its terms and conducted an impermissible general search. United States v. Henson, 848 F.2d 1374, 1383 (6th Cir.), cert. denied, 488 U.S. 1005 (1988); United States v. Lambert, 771 F.2d 83, 93 (6th Cir.), cert denied, 474 U.S. 1034 (1985). A flagrant disregard for a warrant's limitations "might make an otherwise valid search an impermissible general search requiring the suppression of all evidence

seized during the search." Id. Given the amount of evidence seized by the police that was not mentioned by the warrant, the defendant maintains that the Court can only conclude that an impermissible general search occurred. While the record supports the contention that a large amount of evidence not mentioned by the warrant was seized, it does not support the conclusion that the police conducted an impermissible general search.

Among the evidence presented to the Court at the suppression hearing was a videotape taken by some of the officers involved in the raid. Clutter and a seemingly endless collection of papers were present throughout those portions of the Baldori residence that were videotaped.

Thousands of documents were taken from the Baldori residence. Each document seized by the police was not inspected to make certain that it was covered by the warrant. Rather, two officers testified that if a file

contained what appeared to be documents covered by the warrant, it would be seized, in its entirety, for further review. One of these officers also testified that it would have taken days to individually review each document found during the search. Given the clutter that was present at the Baldori residence, there is every reason to believe this representation.

Wholesale seizures of files motivated by considerations of practicality are not a "flagrant disregard" for the limitations of a search warrant. Marvin v. United States, 732 F.2d 669, 674-75 (8th Cir. 1984); United States v. Tamura, 694 F.2d 591, 597 (9th Cir. 1983). Clearly, a large number of the documents seized by the police were not mentioned by the warrant. It is equally clear though that practical considerations, not a desire to engage in indiscriminate "fishing," led to their seizure. Under the circumstances, it would be unreasonable to

hold that the law enforcement officials were required to carefully review each document in every file they uncovered. Henson, 848 F2d at 1385. Rather, they were only required to have a reasonable belief that a file or collection of papers found in the clutter contained records that were covered by the warrant.

Furthermore, it is difficult to characterize the seizure of documents from the Baldori residence as a "wholesale seizure." The testimony of law enforcement officers suggests that the number of documents seized by them represented only a small percentage of the number of documents found at the Baldori residence. One officer who assisted with the seizure of documents estimated that fewer than ten percent of the documents found by the police were actually taken. Given the seemingly endless clutter present at the Baldori residence, the Court is inclined to agree with these statements.

In addition to the large number of documents, nearly five hundred computer disks and a personal computer were also taken. Many of the disks contained information whose seizure was not authorized by the search warrant. Law enforcement officers are permitted to search any container found within the premises if there is reason to believe that the evidence sought pursuant to a warrant is in it. United States v. Ross, 456 U.S. 798, 820-21 (1982). The police were permitted to examine the computer's internal memory and the disks since there was every reason to believe that they contained records whose seizure was authorized by the warrant. Furthermore, the police were not obligated to give deference to the descriptive labels placed on the discs by Baldori. Otherwise, records of illicit activity could be shielded from seizure by simply placing an innocuous label on the computer disk containing them. The police also were not obligated to inspect

the computer and disks at the Baldori residence because passwords and other security devices are often used to protect the information stored in them. Obviously, the police was permitted to remove them from the Baldori residence so that a computer expert could attempt to "crack" these security measures, a process that takes some time and effort.[6] Like the seizure of documents, the seizure of the computer hardware and software was motivated by considerations of practicality. Therefore, the alleged carte blanche seizure of them was not a "flagrant disregard" for the limitations of a search warrant. Marvin, 732 F.2d at 674-75; Tamura, 694 F.2d at 597.

Nevertheless, it does appear that several items whose seizure cannot be justified on the grounds of practicality were taken by law enforcement officers. In addition to the aforementioned photographs and slides of her, some Canadian currency belonging to Mr.

Baldori's girlfriend was taken. Some United States currency found in a pair of pants and money belt belonging to Mr. Baldori that arguably was not proceeds from drug transactions was taken as well. Furthermore, a computer printer and a fax machine were seized.[7]

However, the seizure of these items cannot be considered the type of outrageous conduct needed to support the conclusion that the police flagrantly disregarded the terms of a warrant. The behavior of the police who searched the Baldori residence cannot be fairly compared to that exhibited by a local police officer who seized 667 items that he thought might have been stolen while assisting federal officials with the execution of a warrant. United States v. Medlin, 842 F.2d 1194, 1196, 1198-99 (10th Cir. 1988). See also United States v. Rettig, 589 F.2d 418 (9th Cir. 1978). A search does not become invalid simply because some items not

mentioned by the warrant are seized. Lambert, 771 F.2d at 93. This is especially true where, as in the present case, the items outside the scope of the warrant are not going to be used as evidence against the defendant. Henson, 848 F.2d at 1383 (citing United States v. Shilling, 826 F.2d 1365, 1369 (4th Cir. 1987), cert. denied, 484 U.S. 1043 (1988)). Therefore, the Court holds that the officers who executed the warrant at the Baldori residence did not flagrantly disregard its terms.

D.

Much of the defendant's voluminous brief and supporting exhibits addresses the alleged failure of local police officials to follow their internal operating procedures and their alleged violations of various provisions of the Michigan State Constitution. What the defendant forgets though is that the compliance with the Fourth Amendment, not the Michigan State Constitution and internal

policies, is all that is required for the seized evidence to be used against him. United States v. Loggins, 777 F.2d 336, 338 (6th Cir. 1985). Therefore, this argument is summarily rejected.

E.

The defendant also argues that the conduct of the officers executing the warrant was "so outrageous [that is shocks] the universal sense of justice and, as such, requires the dismissal of the indictment." United States v. Arango, 853 F.2d 818, 82728 (11th Cir. 1988). The conduct of the officers involved in the search of the Baldori residence does not even begin to approach this level.

IV.

At the suppression hearing, defendant Sissler called one of the officers that was a subject of the criminal investigation as a witness. This officer invoked his Fifth Amendment right not to incriminate himself.

Because of the crucial role this officer played in the execution of the search warrant, defendant Sissler argues that he was denied his Sixth Amendment right to confront the witnesses against him.

The Confrontation Clause of the Sixth Amendment has long been read as securing criminal defendants only the right to adequately cross-examine adverse witnesses. United States v. Owen, 484 U.S. 554, 557-59 (1988); California v. Green, 399 U.S. 149, 188 (1970) (Harlan, J., concurring). It has not been read, for example, as giving criminal defendants the right to force law enforcement officials to reveal their confidential informants. Cooper v. California, 386 U.S. 58, 62 n.2 (1967). Similarly, this Court declines to hold that its guarantees are abridged when a witness associated with the Government declines to answer questions during the defendant's direct examination. Otherwise, defendants could simply manufacture

violations of the Confrontation Clause by calling witnesses who they know will invoke their Fifth Amendment rights and calling them crucial to their defense. It is inappropriate for the defense to call a witness that it knows will assert the Fifth Amendment right against self-incrimination.[8] United States v. Crawford, 707 F.2d 447, 449 (10th Cir. 1983); People v. Dyer, 425 Mich. 572, 57677, 390 N.W.2d 645, 648-49 (1986). Acceptance of the defendant's argument would foster such unethical conduct. Therefore, the Court simply holds that the rights guaranteed by the Confrontation Clause were not violated because the officer did not testify against the defendant.

V.

For the reasons stated above, the defendant's motion to suppress is denied.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

DATED: August 30 , 1991

1.The interstate travel charge was dismissed pursuant to the plea agreement.

2.The defendant did not present this argument to the Court in his initial suppression motion because the supporting evidence did not come to light until sometime after the June 8, 1990 Opinion and Order.

3.The Government maintains that Minnesota v. Olson, 110 S. Ct. 1684 (1990), should not read as permitting the defendant to challenge the search of the Baldori residence for documentary evidence because an overnight guest is rarely granted access to the portions of a home where such evidence is kept. Since the language in Olson discussing the standing of an overnight guest is, as the Government concedes, extremely broad, the Court declines to base its resolution of defendant Sissler's suppression motion on this issue.

4.The defendant also argues that the warrant was used as a subterfuge to seize property for future forfeiture proceedings. The defendant suggests that a warrant specifically mentioning the property to be forfeited is required for their seizure under Michigan's Forfeiture Statute, see Mich. Comp. Laws Ann. § 333.7522 (West 1981), and the Fourth Amendment. Assuming the defendant is correct, the unlawful seizure of property for future forfeiture proceedings would not require the suppression of all evidence because the conduct of the law enforcement officers who executed the search warrant did not exhibit a flagrant disregard for its terms. See infra Part III-C.

5.In the first suppression hearing held in the spring of 1990, the defendant argued that the warrant failed to give objective guidelines articulating how to distinguish currency from drug transactions from other currency. Stating that no such guidelines were possible, the Court rejected the argument.

6.The parties stipulated at the hearing that a half-hearted attempt to "break" some of the passwords was made.

7.Computer printers contain no internal memory device. Moreover, they can be used with a variety of computers. These observations lead the Court to conclude that the police should have used their own printer when they reviewed the computer hardware and software rather than seizing Mr. Baldori's for that purpose. Therefore, the Court declines to uphold the seizure of this item on the grounds of practicality.

The Government also invokes the "plain view" doctrine to uphold the seizure of the fax machine. It maintains that items purchased with proceeds from illicit activity may be seized under this doctrine. The Court declines to consider the merits of this argument.

8.It is also inappropriate for the prosecution to engage in such conduct.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT DIVISION OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH EMILE SISSLER,

Defendant.

File No. 1:90-CR-12

Hon. Benjamin F. Gibson

ORDER

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 30th day of August, 1991.

PRESENT: HON. BENJAMIN F. GIBSON,
U.S. DISTRICT JUDGE

In accordance with the Opinion dated August 30, 1991, IT IS HEREBY ORDERED that defendant Joseph Emile Sissler's renewed motion to suppress is DENIED.

IT IS SO ORDERED.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

APPENDIX D

APPENDIX D

UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

- - - - - - -

UNITED STATES OF AMERICA,

Plaintiff,

vs. Case No. 1:90:CR:12

JOSEPH EMILE SISSLER, INDICTMENT

Defendant. Hon. Benjamin F. Gibson

_____/

Count 1

On or about January 15, 1990, in Ingham County, in the Western District of Michigan, Southern Division,

JOSEPH EMILE SISSLER,

defendant herein, did knowingly, willfully and unlawfully attempt to possess with intent to distribute approximately 100 pounds of marijuana, a schedule I controlled substance.

21 U.S.C. § 841 (a) (1)

21 U.S.C. § 846

COUNT 2

On or about January 15, 1990, in the Western District of Michigan, Southern Division,

JOSEPH EMILE SISSLER,

defendant herein, did travel in interstate commerce from the State of Virginia to Ingham County, in the Western District of Michigan, with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, to wit: a business enterprise involving the possession with intent to distribute and distribution of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841 (a) (1), and thereafter did perform and attempt to perform acts to promote, manage, and carry on and facilitate the promotion, management and carrying on of

said unlawful activity in that he attempted to purchase, obtain and possess approximately 100 pounds of marijuana for distribution to others as alleged in Count 1 of this Indictment.

18 U.S.C. § 1953 (a) (3)

A TRUE BILL

GRAND JURY FOREPERSON

JOHN A. SMIETANKA
United States Attorney

JOHN C. BRUHA
Assistant United States Attorney

APPENDIX E

APPENDIX E

The pertinent portions of the Plea Agreement read as follows:

PLEA AGREEMENT

Now comes the United States of America, by its attorneys, John. A. Smietanka, United States Attorney for the Western District of Michigan, and John C. Bruha, Assistant United States Attorney, and the defendant, Joseph Sissler, and his attorney, Stuart R. Shafer, and agree as follows:

1. Defendant Joseph Sissler agrees to enter a conditional plea of guilty . . .

* * *

2. Defendant expressly reserves the right, subject to approval of the court under Rule 11(a) (2) of the Federal Rules of Criminal Procedure, to appeal the denials of his pre-trial motions to suppress evidence in this case, and the government hereby consents to the entry of such a conditional plea.

APPENDIX F

APPENDIX F

The pertinent portions of the district court's September 21, 1990 Opinion read as follows:

THE HONORABLE BENJAMIN F. GIBSON,

COURT'S OPINION

THE COURT: It's clear to the Court that under certain circumstances a search warrant may be quashed for the seizure of items not mentioned in the search warrant if the conduct of the police officers is egregious or flagrant. Whether or not this is such a case, I'm not prepared to say absent a full development of the record.

If Mr. Shafer had represented to the Court that the particular conduct of which he was concerned was confined to the photographs and slides, then the Court could make a judgment as to whether or not those items were sufficient to bring this case within the rule set forth in the Lambert case. The Court could make a judgment of whether or not the conduct of seizing those items was flagrant.

However, Mr. Shafer says that there is an ongoing police investigation, which indicates to the Court that at least the police authorities believe that there is sufficient conduct which justifies an investigation. The Court is not confident that the information that is before the Court is all of the information that is out there.

Further, it is appears that the information that has come before the Court regarding the conduct of the police in the execution of this search warrant was information that was -- some of which was revealed subsequent to the suppression hearing that we had. Some of this information came to light in the context of information revealed at hearings involving the forfeiture case as it relates to Mr. Baldori.

Mr. Shafer has asked that the suppression hearing be reopened so that he can present information that is in the nature of newly discovered evidence; that is to say, evidence

that was not available to him or at least evidence that was not known to him at the time of the suppression hearing. The Court could resolve the matter by assuming that the representations that Mr. Shafer has made are accurate and then based on those representations, apply those facts to the law. The Court is reluctant to do that because there could be other information out there, and that should be brought to the attention of the Court. At least Mr. Shafer in the Court's judgment should be given a chance to present whatever information that he has relating to the issue of conduct of the police officers and also relating to the issue of the scope of what was seized as it relates to the limitations in the search warrant.

The court is concerned that since this is a conditional plea, that the issue that -- that the issues that were decided in the suppression hearing plus these issues would be presented to the appellate court, 6th Circuit.

The Court is also concerned that the 6th Circuit would wish to have a factual basis which would permit it to review the matter.

Given all of these circumstances, the Court is going to grant the motion to permit proofs to be reopened in connection with the suppression hearing, confined to the issues at hand; that is to say, the question of the good faith of the police officers and the question of whether or not other items beyond the scope of the search warrant were seized in flagrant disregard for the limitations set forth in the search warrant.

The Court is of the opinion that the matter is not waived. These issues are not waived because of the nature of the conditional pleas and also because of the fact that there has been no sentence in the matter. So we have a conditional plea, and you have a matter that has not been finalized by the sentence. An also the court is also swayed by the fact that this is in the Court's judgement

evidence that is indeed newly discovered or evidence that was not reasonably available to counsel at the time of the suppression hearing.

* * *

I would entertain argument and law on the principle issue of whether the search warrant should be suppressed in light of seizure of the additional evidence. It is not the Court's position that in all cases there should be a suppression. As a matter of fact, it is the Court's position that the rule is otherwise. And unless it's shown that the conduct and/or the items seized are of such a flagrant nature that would cause the Court to quash the search warrant -- I suppose there is a set of facts out there that would cause the Court to do that. I'm not prepared to say that in this case we have such facts. All I am saying is that the defendant should be given an opportunity to present proofs as to whether or not the conduct is flagrant to such

an extent that the entire search warrant should be quashed.

The usual remedy is that obviously those things outside of the search warrant are suppressed and are not admitted into evidence. That's the usual procedure. But there is that window that exists which permits the Court to quash the entire search warrant if the conduct is egregious or flagrant.

The court is not saying that in granting the motion to reopen that these photographs and/or slides are sufficient to constitute a flagrant violation. They may be, and they amy not be. It depends on the nature of the slides and what was done with them and the attitude of the police officers and the circumstances that caused them to be seized and whether or not they may be seized in any event for other reasons apart from the search warrant. That all has to be explored. But beyond that, there may be other conduct that the defendant should be able to present which

would add to that conduct involving the photographs.

The Court believes that the motion may have at least been presented in good faith because the police authorities are conducting their own investigation of the matter apparently. So the court will grant the motion to reopen the suppression hearing to pursue the issues that we have discussed on the record here.

APPENDIX G

APPENDIX G

The pertinent portions of the Judgment in a Criminal Case, Case No. 1:90 CR 12 read as follows:

UNITED STATES OF AMERICA

WESTERN DISTRICT OF MICHIGAN

UNITED STATES
OF AMERICA,

Plaintiff, Case No. 1:90-CR-12

v

JOSEPH EMILE SISSLER, Stuart Shafer
Defendant's Attorney

Defendant

THE DEFENDANT:
pleaded guilty to count One (1)

* * *

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 U.S.C. 846 & 851(a)(1)	Attempt Possession with Intent to Distribute	1/15/90	1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The

sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Count two (2) is dismissed on the motion of the United States.

It is ordered that the defendant shall pay a special assessment of $50.00 for count one (1) which shall be due immediately.

* * *

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Fifty-Seven (57) months.

* * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Three (3) years.

* * *

APPENDIX H

APPENDIX H

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v

JOSEPH EMILE SISSLER,

Defendant.

File N. 1:90-CR-12

Hon. Benjamin F. Gibson

MEMORANDUM OPINION and ORDER

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 7th day of October, 1991.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

Defendant has brought an unopposed motion for release pending appeal. To be granted release, defendant must show that he is not likely to flee the jurisdiction, that he does not pose a danger to any other person or the community, and that the appeal was not interposed for purposes of delay. 18 U.S.C. §

3143; F.R.A.P. Rule 9(c).

This Court finds that defendant meets these criteria. Defendant has always appeared at scheduled hearings, and he has strong family and community ties. He works part time at several jobs. For these reasons, the Court finds that he is unlikely to flee the jurisdiction. Defendant's crime was not one of violence, and the drug tests administered to him as required by his pretrial release have all been negative. Therefore, the Court find that he does not present a danger to others or the community. Finally, the issues defendant raises on appeal are not frivolous. Therefore, the Court finds that they were not raised for the purposes of delay. Therefore, defendant's motion for release pending trial should be granted.

IT IS HEREBY ORDERED that defendant Joseph Emile Sissler's motion for release pending appeal is GRANTED.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

Dated: October 7, 1991

APPENDIX I

APPENDIX I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HON. BENJAMIN F. GIBSON

v

File No. 1:90 CR 12

JOSEPH EMILE SISSLER,

Defendant.

ORDER EXTENDING REPORT DATE

At a session of the Court held in and for said District and Division in the City of Grand Rapids, Michigan, this ____ day of September, 1992.

PRESENT: HON. BENJAMIN F. GIBSON, DISTRICT JUDGE

This matter having come before the Court pursuant to a Third Motion to Extend Time filed by defendant, and the Court having reviewed said motion herein and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED that defendant's motion is **GRANTED**. The defendant is to report

to the U.S. Marshal's in Grand Rapids, Michigan on Friday, October 23, 1992 by 2:00 p.m.

IT IS SO ORDERED.

BENJAMIN F. GIBSON
DISTRICT JUDGE

APPENDIX J

APPENDIX J

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Case No. 90-4M

In the Matter of
the Search of:

the premises known as 2719 E. Mount Hope Rd. including curtilage and outbuildings, Okemos, Michigan, County of Ingham

***

ATTACHMENT

unknown quantity of marijuana; scales used to weigh marijuana; proceeds of marijuana sales in the form of U.S. currency; records of marijuana transactions; records of assets purchased with the proceeds of marijuana transactions; safety deposit box keys; phone numbers of marijuana customers and sources of supply for marijuana.

***

AFFIDAVIT

Affiant, DENNIS LANGKOS, being duly sworn, deposes and states the following:

1. Affiant is a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and has

been so employed since July, 1972. Since October, 1977, Affiant has been assigned to the Lansing, Michigan Resident Agency of the FBI and,since 1982, Affiant has been assigned to investigate violations of Federal narcotics laws.

2. Affiant avers that probable cause exists to believe that on the premiss commonly known as 2719 East Mount Hope Road, Okemos, Michigan, said premises being the residence of ROBERT (BOB) BALDORI and KELLY BOYCE and the location of Lansing Sound Studios, Incorporated, and Kelly Screen Printing, there currently exists and unknown quantity of marijuana; scales used to weigh marijuana; proceeds of marijuana sales in the form of U.S. currency; records of marijuana transactions; records of assets purchased with the proceeds of marijuana transactions; safety deposit box keys; and phone and address books containing the names, addresses and telephone numbers of BALDORI'S marijuana customers and

sources of supply for marijuana. Further it is anticipated that during the evening hours of Monday, January 15, 1990, there will exist on the premises in excess 100 pounds of marijuana and a sum of U.S. currency, the intended us of which is to pay for said marijuana. The probable cause is as follows:

3. SA GENE KROUCH of the FBI Office in Little Rock, Arkansas, has advised the Affiant that on December 2, 1989, FBI Agents in Little Rock, Arkansas, arrested EDWARD KANE of Boulder, Colorado, and ROGER SPAGNUOLO of Lansing, Michigan. These arrests had taken place after KANE had purchased 85 pounds of marijuana which was then placed into an automobile being driven by SPAGNUOLO. In a subsequent interview with FBI Agents, SPAGNUOLO advised that he had driven to Little Rock, Arkansas, at the request of JIM JOSEPH of Lansing, Michigan, for the purpose of picking up the marijuana which was to be furnished to him by KANE. SPAGNUOLO was then

going to drive the marijuana back to Lansing, Michigan and deliver it to JOSEPH. For this service, JOSEPH was to pay SPAGNUOLO a sum of $2,000. SPAGNUOLO made JOSEPH aware of the fact that he had implicated him (JOSEPH) in the scheme and, subsequent to that, JOSEPH traveled to Little Rock, Arkansas, for the purpose of meeting with Federal authorities regarding the matter in question. In a subsequent interview with FBI Agents, JOSEPH admitted his role in the marijuana transaction which had occurred on December 2, 1989, and he also admitted four previous marijuana transactions involving himself and KANE which had occurred during 1989. Further, JOSEPH stated that he had only one customer for all of the marijuana which he had purchased from KANE during 1989, that customer being BOB BALDORI of Okemos, Michigan.

4. Further, SA KROUCH has advised the Affiant that JOSEPH had entered into a plea agreement with the UNITED STATES ATTORNEY'S

OFFICE in Little Rock, Arkansas, and part of this agreement included JOSEPH'S full cooperation in matters remaining under investigation, this cooperation to include his assistance into the investigation of the illegal drug activity of BOB BALDORI.

5. Affiant avers that on January 4, 1990, Affiant and Detective Lieutenant PAUL WHITFORD of the Michigan Department of State Police, interviewed JIM JOSEPH at his residence located at 2455 Aurelius Road, Apartment number 5, Lansing, Michigan. During that interview, JOSEPH advised that he has known BOB BALDORI for approximately 20 years and that, in the past, he had worked with BALDORI in the music business. JOSEPH also advised that since BALDORI became an attorney licensed to practice law, BALDORI had represented him on various civil matters. At the present time, BALDORI is representing JOSEPH regarding a traffic offense which allegedly took place in Lansing, Michigan. JOSEPH also advised

that, during the early part of 12989, through personal conversations with BALDORI, he learned that BALDORI is also in the business of buying and selling marijuana.

6. Further, JOSEPH advised that when he (JOSEPH) lived in Colorado, he had met ED KANE, supra, and had purchased marijuana from KANE in the past. JOSEPH advised that about the same time that he had learned about BALDORI's marijuana activities, KANE contacted him and asked him if he wanted to buy some marijuana. According to JOSEPH, BALDORI was willing to purchase marijuana furnished to JOSEPH by KANE and, as a result of this, beginning in April or May of 1989, JOSEPH was part of four marijuana transactions wherein KANE furnished marijuana to JOSEPH, and JOSEPH then sold the marijuana to BALDORI. A total of approximately 400 pounds of marijuana was involved in these four transactions with each transactions totaling approximately 100 pounds of marijuana. In addition JOSEPH has

purchased small amounts of high quality personal use marijuana from BALDORI during 1989.

7. Further, JOSEPH advised that the method of operation for each and every one of the before mentioned marijuana transactions was exactly the same. On each occasion, KANE would contact JOSEPH and advise him of the weight of the marijuana that was being shipped and of the estimated time of arrival. JOSEPH would then contact BALDORI and advise him of the information that had been received from KANE. The marijuana was always delivered into the Lansing area in an automobile being driven by someone working for KANE. After JOSEPH took possession of the marijuana, he would then deliver the marijuana to BALDORI's residence on East Mount Hope Road in Okemos, Michigan. JOSEPH stated that the residence is occupied by BALDORI and his girlfriend, KELLY (Last Name Unknown). This residence is also the location of a recording studio owed by

BALDORI, Lansing Sound Studios, Incorporated, and it is also the location of a screen printing business operated by BALDORI'S girlfriend. JOSEPH stated that once the marijuana was delivered to BALDORI, he weighed the marijuana to make sure that the stated weight was correct. JOSEPH stated that he would then leave the residence and wait for a call from BALDORI who would then inform him that the money for the marijuana was ready to be picked up. JOSEPH would then return to BALDORI'S residence, pick up the money, and then give the appropriate amount of money to the runner, if he was still in town. BALDORI would pay JOSEPH as early as an hour to two hours after the marijuana had been delivered.

8. Further, JOSEPH advised that BALDORI has advised him that he (BALDORI) his other sources of supply for bulk quantities of marijuana. JOSEPH also recalled that, on one occasion, BALDORI contacted him and attempted to place an order for 500 pounds of marijuana.

JOSEPH was unable to fill this order because KANE could not provide him with that much marijuana at that time. On that occasion, BALDORI advised JOSEPH that this marijuana was for an old customer who lived somewhere in the state of New York. JOSEPH does not know the identities of any of BALDORI's customers.

9. Further, concerning the 85 pounds of marijuana purchased by ED KANE on december 2, 1989, JOSEPH stated that this marijuana would also have been delivered to BALDORI had SPAGNUOLO not been arrested, and this would have been the fifth marijuana transaction in 1989 which involved KANE, JOSEPH, and BALDORI. JOSEPH added that BALDORI was very careful about meeting new people and never wanted to meet KANE. When JOSEPH failed to deliver the 85 pounds of marijuana to BALDORI, JOSEPH told BALDORI that KANE had refused delivery of the marijuana from his source of supply because of very low quality.

10. On January 10, 1990, JOSEPH advised

Affiant that he had been in contact with BALDORI and had advised BALDORI that his source of supply for marijuana in Colorado was prepared to send a shipment of marijuana. According to JOSEPH, BALDORI showed interest in purchasing this marijuana.

11. Affiant avers that during the evening hours of January 10, 1990, JOSEPH's person was searched and found to be void of controlled substances. The passenger compartment of JOSEPH'S vehicle was also searched and found to be void of controlled substances. The passenger compartment of JOSEPH's vehicle was also searched and found to be void of controlled substances. A Nagra body recorder and a transmitting device were then secreted on JOSEPH'S person and, thereafter, JOSEPH was surveilled to BALDORI's residence at 2719 East Mount Hope Road, Okemos, Michigan. JOSEPH then met with BALDORI and discussed the impending marijuana transaction. BALDORI tentatively agreed to

accept delivery of approximately 100 pounds of marijuana at a delivery price of $950 per pound. JOSEPH advised BALDORI that it would be possible to make the delivery as early as Friday evening, January 12, 1990. BALDORI also sold to JOSEPH one ounce of what he purported to be high quality marijuana for a purchase price of $240.00. At that time, BALDORI advised JOSEPH that the usual selling price for this marijuana was $300.00 per ounce and that he estimated that he had enough of this marijuana left to last until the following Wednesday, which would be January 17, 1990.; At that time, BALDORI also discussed whether or not he could line up his customer(s) by Friday, so he could make a quick turnaround on the marijuana and pay JOSEPH.

12. On January 11, 1990, Detective Lieutenant WHITFORD advised Affiant that he had conducted a chemical field test on the material purchased by JOSEPH from BALDORI the

previous evening and that the results of this test showed that the substance tested positive for marijuana. WHITFORD further advised that on January 11, 1990, he had been contacted by JOSEPH who advised him that BALDORI advised JOSEPH that he could not get his customers lined up to take delivery until Monday, January 15 1990. Further, BALDORI wanted more than 100 pounds of marijuana if it could be obtained, as BALDORI'S customer wanted more than 100 pounds of marijuana. BALDORI had also advised JOSEPH that he wanted to "cash out" which, according to JOSEPH, means that BALDORI would have the cash at his house within one to two hours after the time that JOSEPH delivered the marijuana to BALDORI at 2719 East Mount Hope Road.

13. Further, WHITFORD advised Affiant that he had made arrangements to obtain approximately 160 pounds of marijuana and that this marijuana would be provided to JOSEPH during the evening hours of January 15, 1990,

and that thereafter, JOSEPH would make a controlled delivery of marijuana to the BALDORI residence.

14. On January 10, 1990, JOSEPH advised Affiant that on previous occasions when he had been in the BALDORI residence, he has observed two scales. One of these scales is a small triple beam balance scale which BALDORI uses to weigh small quantities of marijuana, and JOSEPH has also observed a larger bulk scale which BALDORI uses to weight multi-pounds of marijuana. JOSEPH has also observed in the residence marijuana seeds which BALDORI was germinating.

15. Affiant avers that from personal experience investigating narcotics violations for nearly eight years, he knows that individuals involved in illegal drug activities frequently maintain in their residence keys for safety deposit boxes which are used to conceal proceeds from drug transactions, financial records showing the

location and account numbers of bank utilized to deposit the proceeds of drug transactions, records reflecting the purchase and sale of illegal drugs, records showing the acquisition of assets purchased with drug proceeds, telephone toll records showing long distance telephone calls made to drug suppliers and drug customers, and address and telephone books showing the names, addresses and telephone numbers of customers and sources of supply.

16. Affiant avers that the most recent telephone directory for the Lansing, Michigan, area lists ROBERT BALDORI, 2719 Mount Hope Road, Okemos, Michigan.

17. The property to be searched is an L-shaped structure consisting of a two story single family residence which has attached to it a single story recording studio, said structure being of wood frame construction and wooden exterior and curtilage. This property is located immediately adjacent to and East of

the Montessori School on E. Mt. Hope Road and being approximately 75 yards west of the intersection of Copperhill Drive and E. Mt. Hope Road.

18. Affiant requests the issuance of an anticipatory search warrant to be effective upon the delivery of the requested marijuana to 2719 E. Mt. Hope Road, Okemos, Michigan. Affiant further requests authorization to search at any time during the day or night, since it is unknown at this time when both the marijuana and the anticipated payment will be at the location to be searched.

19. Affiant further sayeth not.

DENNIS W. LANGKOS,
Special Agent
Federal Bureau of
Investigation

The pertinent portions of the Search Warrant read as follows:

> I am satisfied that **upon delivery of marijuana** to 2719 E. Mount Hope Rd., Okemos, Michigan, **there will be** [approximately six (6) pre-printed words are blackened out by magic marker] **probable cause** to believe that the property so described is being concealed

> on the person or premises above-described . . . YOU ARE HEREBY COMMANDED, **upon delivery** of marijuana to 2719 E. Mount Hope Rd., Okemos, Michigan, to search ...

(Emphasis Added).

* * *

ATTACHMENT

unknown quantity of marijuana; scales used to weigh marijuana; proceeds of marijuana sales in the form of U.S. currency; records of marijuana transactions; records of assets purchased with the proceeds of marijuana transactions; safety deposit box keys; phone numbers of marijuana customers and sources of supply for marijuana.

APPENDIX K

APPENDIX K

Pertinent portions of Dennis Langkos'

Testimony taken on May 24, 1990 before the

Hon. Benjamin F. Gibson read as follows:

Q. What, if anything, did you do to verify the information that Joseph gave you?

A. Concerning like what point?

Q. Any point.

A. I don't know if I can really answer that. The suppression -- it pertains to the suppression order. But I'll start to say that, Number 1, the conversations that occurred between Baldori and Joseph on the night of January 10th to a certain extent verified or corroborated what Joseph had already told us.

Q. Did you put any of that into the search warrant?

A. I think the affidavit speaks for itself.

Q. Well, I don't care what you think. Did you put any of that into the search warrant?

A. Like what?

Q. Any verification or corroboration of information that Joseph supplied you.

A. I would have to read the search warrant and see how you define corroboration. Certainly it does mention that the conversations were tape-recorded and that during those conversations there is mention of this deal that they were making. Certainly every detail of the conversation is not

mentioned in the affidavit.

Q. Okay. Isn't it true that you never put in the search warrant affidavit what those conversations were, only that Mr. Joseph was wearing a tape recorder?

A. I think it is my recollection I put in they came to an agreement concerning the delivery of the marijuana.

Q. Did you try to verify or corroborate any information that Joseph supplied you concerning the history of Baldori, his history with Baldori?

[Objections]

THE COURT: Well, you may proceed in connection with this matter.

MR. SHAFER: Thank you.

Q. Isn't truth that Joseph advised you that he -- the first deal he had with Baldori was in April or May of 1989 for about a hundred pounds?

A. I recall that.

Q. And that a runner stayed at the Knights Inn in Pennsylvania and that Cane flew in and stayed at the Knights Inn on West Saginaw.

[Objections]

Q. What if anything did you do to verify that a runner stayed at the Knights Inn on South Pennsylvania?

A. Number 1, Mr. Joseph did not know the identify of the runner. We do know whether he would have registered in his true name even if we did.

Likewise, as far as Mr. Cane, in my dealings with the airlines, they do not keep passenger lists for that length of time. And, Number 2, we do not know, even if they did, if he traveled under his true name. And in my experience also, individuals do not always register in their true names at hotels or motels.

So your answer is: Basically did I check that out? No. But the reason for it is the probability of being successful or that coming to fruition are just about nil. But, Number 1, Mr. Joseph didn't have the runner's identity.

Q. Cane was cooperating with law enforcement in Little Rock; isn't that correct?

A. No, not at that time. If he is now, I don't know if he is or isn't.

Q. The answer is you made no effort to corroborate that information?

A. I would like to qualify the answer saying, Number 1, the majority of his dealings concerning these marijuana transactions with the exception of Cane, which I've just discussed and the runner, which I've just discussed, Mr. Joseph alleged to be one-on-one transactions. And certainly without going to Mr. Baldori at that point, what else can you try to verify and corroborate?

Q. He also advised you of a second deal in June for about a hundred pounds where a runner stayed at the Holiday Inn on South Pennsylvania. Isn't that correct?

A. If that's what the affidavit says, yes.

Q. The affidavit doesn't say it. Whitford's report says that.

A. He could have said that, yes.

Q. What, if anything, did you do to corroborate that?

A. My answer to that question would be the same as to the answer on the first one, where again you would not know the identity of the runner. If we did, we do no know the identify the runner used to register.

Q. And would your answer be the same with respect to the information he provided for a third deal of August and September of 1989?

A. That is correct.

Q. And for a fourth deal in October of 1989?

A. That is correct.

Q. Would it be correct that prior to having him contact Baldori in this investigation, you made no effort to corroborate or verify any of the information he provided to you about Baldori?

A. Some of the information I knew already.

[Counsel's comments]

THE COURT: Well, the record doesn't reflect what information we're talking about.

Do you know, Witness, what information? What information did you refer to?

THE WITNESS: Well, you know, he talked about Baldori having a recording studio and things like that; and, certainly I knew that already. He said that Baldori was a practicing attorney. I knew that already.

92-717

FILED
OCT 23 1992
OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOSEPH EMILE SISSLER

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME II

STUART R. SHAFER (P-25599)
REID AND REID
One Business & Trade Center
200 Washington Square, North
Lansing, Michigan 48933-1384
(517) 487-6566
Attorneys for Defendant-
Petitioner

APPENDIX - VOLUME II

TABLE OF CONTENTS

Appendix L
Testimony from Hearing held May 24, 1990 before the Hon. Benjamin F. Gibson 116-121

Appendix M
Testimony from Suppression Hearing held March 22 and April 4, 1991 122-138

Appendix N
Testimony from Suppression Hearing held March 19 & 21, 1991 139-140

Appendix O
Inventory of Financial Records Seized; Inventory of Computer Disks 141-186

Appendix P
Notes from Team Meeting Minutes ..187

Appendix Q
Note from Lt. Paul Whitford 188

Appendix R
Excerpt from Lansing Police Report (Statement from APA Warren and APA Cipriani) 189-191

Appendix S
Excerpt from Supplemental Report..192-196

Appendix T
Excerpt from "Policy Governing Reverse Drug Transactions" 197-199

Appendix U
Excerpt from "Guidelines for Operation of the Tri-County Metro Narcotics Squad" 200

Appendix V
Excerpt from Sworn Statement of James Joseph 201-205

Appendix W
Temporary Restraining Order 206-209

Appendix X
Testimony of Chris Magnus and Steven Luciano 210-212

Appendix Y
Criminal Complaints re: Daniel Zolnai and Leslie Diebolt 213-216

Appendix Z
Excerpt of MCL 764.1(1) and MCL 764.1a(1) 217

APPENDIX L

APPENDIX L

Pertinent portions of the testimony of Dan Zolnai from hearing held May 24, 1990 before the Hon. Benjamin F. Gibson. pp. 14-16:

"Q. Okay. Was there a briefing prior to the execution of the search warrant?

A. There was.

Q. Okay. And were all the officers at least who were available that were going to participate in the execution of the search warrant, did they attend that briefing?

A. That is correct.

Q. Who conducted the briefing?

A. I do not recall.

Q. Would it -- could it have been Lieutenant Whitford?

A. Yes.

Q. Do you think it was or you just don't know?

A. I would say that it was either Lieutenant Whitford in combination with Denny Langkos.

Q. Would that be because Whitford was in charge of this investigation from Metro, and Langkos was in charge of the investigation from the FBI?

A. That is correct.
Q. Okay. What was discussed at the briefing?

A. The diagram of the house, a brief description as to the circumstances involving this particular case, assignments to the Tri-County Metro officers, whether it be for search teams, things of that nature, also exterior things or positions for Tri-County Metro officers prior to the search, instructions to the entry team. And I think that pretty much would cover it.

Q. Is that where you received your assignment?

A. That is correct.

Q. And you were assigned not only to collect evidence, but you were also assigned to make initial entry with a ram; is that correct?

A. That is correct.

Q. And that would have been with Officer Forrest?

A. Correct.

Q. Was there any discussion or briefing concerning the search warrant itself?

A. I don't recall.

Q. Do you recall if you were told that this was a federal search warrant as opposed to a state search warrant?

A. That I don't recall either.

Q. Okay. Do you recall if anybody read the search warrant to you?

A. Again I don't have recollection on that.

Q. Okay. Is it customary that somebody would read the search warrant?

A. In most circumstances, they would indicate what could be collected and the place to be searched.

Q. But you don't recall if that happened in this case?

A. I don't have direct recollection on that.

Q. Okay. Did -- being in charge of collection, did somebody provide to you a copy of the search warrant so that you would be able to refer to it during the course of the search?

A. Prior to the search, no.

Q. Okay. Ultimately, after the search, you got a copy of the search warrant to attach to your report, is that correct?

A. That is correct.

Q. Okay. I may have asked this, did you even know at the time of the search warrant whether it was a federal search warrant or a state search warrant?

A. I did at the point of entry.

Q. And how did you learn that?

A. When Special Agent Langkos knocked on the door and said, "FBI, federal search warrant."

Q. Okay. That was a dead give away; is that right?
A. Yes."

* * *

The following is testimony from Stephen Early

from the hearing held before the Hon. Benjamin F. Gibson on May 24, 1990, p. 130:

"Q. Okay. Did anybody read the search warrant to you?

A. No one read the search warrant to me. It may have been read. I don't recall if it was or not.

Q. Did you read the search warrant?

A. I did not, no, initially.

Q. Did anybody tell you what you could take or not take under the search warrant?

A. We had conversations initially on as far as a computer inside the house.

Q. Where did that conversation take place?

A. At the house.

Q. But prior to going into the house, did you have any conversations as to what you could or could not take under the search warrant?

A. There may have been, I don't recall."

* * *

The following is pertinent testimony from Officer Ed Forrest from the hearing held on May 24, 1990 before the Hon. Benjamin F. Gibson, pp. 159-160:

"Q. Okay. The Baldori search warrant would be the first federal search warrant?

A. Yes, sir.

Q. When you were assigned the duty of collection, did anybody give you any instructions or guidance with respect to any possible differences between a state and federal search warrant?

A. I wasn't aware that there was a difference between a state and federal search warrant.

Q. So the answer is nobody -- Whitford or Benston or Langkos or nobody else gave you any specific instructions?

A. I wasn't aware that there was a difference between a state and a federal search warrant.

Q. I understand. And nobody told you that there was. Right?

A. No, sir.

Q. I may be wrong. Maybe there isn't any difference. I'm not trying to get you to state what the law is, only that nobody told you that there was any difference?

A. Yes, sir.
Q. Did anybody provide you a copy of the search warrant prior to your execution of the search warrant?

A. No, sir.

Q. Or during the execution of the search warrant?

A. No, sir.

Q. Did anybody give you instructions on how to distinguish between proceeds of marijuana transactions in the form of U.S. currency and any other currency that might be found?

A. That's usually left up to the forfeiture detectives that are there.

Q. And would you agree that it was Detective Early's decision to seize the currency in the house?

A. Either Detective Early or Detective Thelan's."

APPENDIX M

APPENDIX M

Pertinent portions of testimony from March 22, 1992 and April 1, 1991 from Suppression Hrg.

The following is pertinent testimony of Stephen Early, Tr., p. 14:

"Q. Prior to going into the Baldori premises, did you have any information sufficient for your experience to get a search warrant?

A. For --?

Q. For forfeiture items, seizure of records?

A. You know, I don't know if the information I had would be enough to get a search warrant."

* * *

The following is pertinent testimony of Stephen Early, Tr., p. 28:

"Q. Officer, where is that documentation?

A. Well, it's not an inventory. It's a net worth analysis that was started prior to the IRS getting the documents.

Q. Okay. When you say 'a net worth analysis', you could have rummaged through the boxes, picked and chosen selectively what documents you wanted. Is that right?

A. No, I went through all the documents."

* * *

The following is pertinent testimony of

Stephen Early, Tr., p. 50:

"A. Most of the items I seized I needed for a net worth analysis to prove the -- that items were being purchased with drug money, assets of Robert Baldori."

* * *

The following is pertinent testimony from

Stephen Early, Tr., pp. 65-66:

"Q. What you're telling me then if I understand you correctly is that at the time you entered the Baldori premises, you already had probable cause to search and seize records of marijuana transactions?

A. Before? No.

Q. Yes.

A. No."

* * *

The following is pertinent testimony of

Stephen Early, p. 74:

"Q. Would it be a fair staement that you were not -- unless you can actually remember, you would not be be to look at any particulr document and be able to tell who took it?

A. No, that's not true.

Q. How can you tell then?

A. Once in the house, I found one document which showed that he had purchased some

property out on Ox Road in Perry. And I started looking for more documents in regards to that.

Q. I'm not sure you understand my question.

A. You're saying that I can't identify any document.

Q. No, no, no.

A. Okay. I'm sorry.

Q. By looking at a document or by Judge Gibson looking at a document, there is no way to look at that document and determine who took it.

A. Unless I specifically look at the documents and I remember the ones I've taken, yes.

Q. Okay. Okay. There is no documentation as to who took any particular document?

A. As best as I can recall, no.

* * *

The following is pertinent testimony of

Stephen Early, Tr., p. 81:

"Q. Would it be fair to say that while you were at the Baldori premises that you had no evidence that records of Lansing Sound Studios were records of assets purchased with the proceeds of marijuana transactions?

A. I had no information that marijuana money had gone into Lansing Sound Studios at that point.

Q. Okay. So you took it because you wanted

records to build your net worth. Right?

A. To show that he was trafficking in marijuana, yes."

* * *

The following is pertinent testimony from

Stephen Early, p. 145.:

"Q. Detective Early, did you feel that the search warrant was limited to 1989?

A. No."

* * *

(pg. 163-164):

"Q. Okay. You indicated you took a fax machine, and you took that as an asset?

A. Yes.

Q. You would agree, wouldn't you, that assets at least under the search warrant are not authorized?

A. Yes.

Q. I think Mr. Bruha asked you about -- you agreed that the search warrant was not limited to 1989?

A. Yes.

Q. What were the -- what was your understanding? What were the limits of that search warrants?

A. I don't know. If there was marijuana in there from 1969, we certainly could have seized 1969 marijuana.

Q. Let me clarify. Not marijuana. But in terms of proceeds of marijuana sales, records of marijuana transaction, records of assets, that type of thing.

A. Well, if there was definitely records of marijuana transactions and -- how long do you know they have been there if they aren't dated. They could have been there ten years. Under the search warrant, you certainly seize them.

Q. Even if they are dated?

A. I don't know what the answer would be."

* * *

The following is pertinent testimony of

Stephen Early, p. 170-171:

"Q. So you would agree that there were time limits within the search warrant; although, you don't know what those time limits were?

A. Well, the time limits were there only because I didn't know exactly what the dates were. And because I didn't know the dates, I didn't want to seize the items."

* * *

The following is pertinent testimony of

Patrick Healey, p. 199:

"Q. You would agree, would you not, that you had no probable cause to get your own search warrant to go in and search for records or documents?

A. Prior to the day Denny Langkos briefed me on what was going on, I probably didn't have

any probable cause.

Q. You probably didn't or you didn't.

A. I didn't have.

* * *

The following is pertinent testimony of

Patrick Healey, p. 222:

"Q. Is there anything from what's written on the boards which lists the items that could be seized which indicates to you that you could only seize items back to a certain date?

A. No.

Q. It's pretty general. Right?

A. Um-hum.

Q. You have to say yes or no.

A. I'm sorry. Yes.

Q. So when you say that you decided only to go back to the mid 1980's, that's something that you determined in your own mind, not by anything required of you by the search warrant?

A. Yes."

* * *

(p. 226)

"Q. Okay. But that could be your own discretion and not something that you could look at the search warrant, and the search warrant would tell you "I shouldn't take that." Do you understand what I mean?

A. Yes.

Q. In other words, you couldn't use the search warrant as a guide to look at the document and look at the search warrant and by looking at the search warrant determine, "Yep, I should" or "I should not take it"?

A. That's correct."

* * *

The following is pertinent testimony of

Patrick Healey, Tr., p. 257:

"Q. Can you explain to me how they relate to records of assets purchased with proceeds and so on?

A. Probably what it would do is indicate how much he -- well, first of all, there are several different reasons that you might want to take a Consumers or another utility bill.

Q. Okay. Name a couple.

A. It may be to indicate another address, another business.

Q. Right.

A. Another entity. Or find out how much he's actually paying.

Q. Net worth. It goes to net worth?

A. Well, like I stated before, most records do, so other --

Q. Okay. But you would agree there is nothing in the search warrant that allows you take [sic] records pertaining to net worth?

A. Well, I already stated that we weren't looking for records for net worth."

* * *

The following is pertinent testimony of

Charles McCord, Tr., p. 271:

"Q. You do agree that the Baldori operation was governed by this policy?

A. Yes."

* * *

McCord, p. 274:

"Q. You were the sub-unit commander?

A. Yes sir."

* * *

Q. And isn't it true that under 5(B), it says the sub-unit commander shall present the case to prosecuting attorney responsible for review and you didn't do that?

A. I did not do that.

Q. Under VI(A)(1), it indicates:

> 'Only experienced officers from departmental work units who are familiar with this policy will be assigned as the seller in a reverse drug transaction.'

That policy was violated, was it not?

A. That was not followed. That's correct."

* * *

McCord, p. 275:

"Q. Under VI(A)(3):
'Every attempt should be made to eliminate confidential informants from the actual reverse drug transaction exchange.'

That was not done; is that correct?

A. That's correct."

* * *

McCord, p. 281:

"Q. But the seller has to be an undercover officer, and your undercover officer, a departmental work unit member under (B)?

A. It should be, yes."

* * *

McCord, p. 282:

"Q. I guess as far as to your personal knowledge, were all other participating agencies asked if they would agree to follow this reverse drug transaction policy? In other words, did you ask Langkos, "Look. Here is the policy we've discussed. Now you know what it is. Do you agree to follow it?

A. I don't recall asking him that."

* * *

McCord, p. 283:

"Q. -- a copy of Exhibit X?
You would agree that Metro is bound by the "Guidelines for Operation of the Tri-County Metro Narcotic Squad?

A. Yes."

* * *

McCord, p. 287:

"Q. ... If you're using a confidential informant, these policies will apply?

A. Yes."

* * *

McCord, p. 292:

"Q. Okay. At some point in time, it became clear that officers of Metro were displaying photographs and slides of Kelly Boyle?

A. I believe that's accurate, yes.

Q. There was a slide show. Right?

A. There was at least some allegation of a slide show. Again I can't confirm that one way or the other for you.

Q. You're aware that Diebolt took slides from Metro and showed them to Doerr,D-O-E-R-R, outside of Metro?

A. At least through conversation, I am aware.

Q. Doerr told Patrick, Patrick told you, and that's how you got the information?

A. Actually Doerr told me.

Q. Doerr told you. Okay. What action, if any, did you take as a result of -- you would agree that that's a violation of this policy, 37 and 37? Right?

A. Yes."

* * *

The following is pertinent testimony of Lt. McCord, pp. 310-311:

Q. At a point in time after the execution of the search warrant, Diebolt showed you some photographs that he had taken from a search warrant scene and not listed as evidence.

A. I only recall that it was one photograph.

Q. Okay.

A. And it was -- it was at a point in time when he would not have had the opportunity to list them as evidence. We were just leaving the scene.

Q. You told him to destroy it. Isn't that true?

A. My recollection is that I told him that having the picture was inappropriate and that kind of conduct wasn't something I could tolerate. And I do not recall what I told him to do with the photograph.

Q. You didn't have it tagged in?

A. No. I think it would be inaccurate that I told him to have it tagged in. That's wrong. I know I didn't do that.

Q. The best you can recall is you left it to his own discretion about what to do with the photograph?

A. That's the most accurate way to describe it.

Q. By looking at the photograph, you knew the photograph had no evidentiary value?

A. That was the assumption I came to, yes.

Q. And you reprimanded him but took no other action?

A. That's correct."

* * *

McCord, Tr., p. 334:

"Q. None of the documents that were taken from the Baldori premises wre either marked or inventoried prior to Judge Houk ordering that they be inventoried; isn't that correct?

A. I'm sorry. Repeat the question for me.

Q. None of the papers, the documents that were seized from Baldori's premises, were ever marked or cataloged or inventoried until Judge Houk a year later ordered that they be inventoried.

A. I know that they weren't inventoried to the degree of identifying each and every piece of paper. That part is correct."

* * *

The following is pertinent testimony of Dennis

Langkos, Tr., p. 344:

"Q. And it would be fair to say that in putting together this search warrant, you were aware that the search warrant itself gave you no time limitations that you could look at the search warrant and say, 'I can't go beyond this date?'

A. I don't recall any discussion like that.

Q. Okay. You would agree that by looking at the terms of this search warrant, that there are no time limitations to give you guidance s to what you can seize and what you can't?

A. On the face -- you know, I think the search warrant speaks for itself. You know --

Q. I appreciate your -- When you -- You're an officer who executes search warrants?

A. That is correct.

Q. And in executing a search warrant, you have to look at the document itself for some guidance as to what you can seize and what you can't. Right?

A. Correct.

Q. And by looking at this document, you cannot tell what time limitations, if any, there are as to what you can seize or what you can't. Isn't that true?

A. That's true."

* * *

(Langkos, pp. 363-366)

"Q. You did not go to Grand Rapids on December 12th with Whitford and Early to get an affidavit from James Joseph?

A. Say that again.

Q. You did not go with Whitford and Early to Grand Rapids to visit James Joseph to get an affidavit?

A. I don't know. Either way, I didn't know.

Q. And on December 13th, you didn't go.

Right?

A. I don't know. I've been told by hearsay that there were two occasions that -- I know Lieutenant Whitford went.

Q. You didn't -- you weren't there in Grand Rapids with James Joseph?

A. No.

Q. And in the evening or sometime on December 13th, Whitford called you and said, "Denny, Joseph told me that he gave a sworn statement to Fox and Shafer that you had knowledge of these photographs and slides, and you had knowledge of these photographs and slides within days after the execution of the search warrant."

A. No.

Q. You're saying Whitford didn't call you and tell you that?

A. No.

Q. Did Whitford call and tell you and discuss with you his conversation with Joseph on December 13th concerning photographs and slides?

A. No. He told me right to my face.

Q. Boy, I'm sorry I misstated that.

So Whitford met with you and told you of his conversation with Joseph?

A. And he also told me that you and Mark Fox hoped to --

Q. I'm -- excuse me. I'm asking the questions, Officer.

THE COURT: Just a moment. Just a moment. Put a question to him, and then we'll get an answer.

MR. SHAFER: Thank you.

Q. It's true that he told you about his conversation with James Joseph, isn't it?

A. That's correct.

Q. And you told him at that time, "I want to go with you on Friday and talk to him."

A. That's correct.

Q. And there was no other reason for you to be there; isn't that correct?

A. The affidavit was the reason. I said there were two reasons.

Q. But you're aware through the conversation with Whitford that he and Early had gone up twice with respect to the affidavit.

A. I don't know if Early had gone or not. Lieutenant Whitford told me he had gone.

Q. And Whitford didn't say "I need you to get this affidavit."

A. Correct.

Q. You wanted to go?

A. That's correct.

Q. And you wanted to go so you could talk to Joseph?

A. That's one of the reasons, yes.

Q. And when you did talk to Joseph, you

said, "Joseph, whose side are you on?"

A. No, I did not.

Q. You argued with him about the statement he gave to Fox and myself.

A. Which one?

Q. The one in which he told you -- in which he told us that he talked with you several times on the phone, and you made reference to the pictures that you had in your possession and that the conversation in which he told us that he was visiting you in your office, and you showed him a stack of pictures?

A. I took exception with him about things that he said, and I know he was wrong.

Q. But you did take exception with him?

A. I did.

Q. You argued with him about it?

A. I don't know if you'd call it an argument.

Q. And he said, "Denny, that's how I remember it." Isn't that what he said?

A. That's correct.

Q. And incidentally the only way he would give you an affidavit was after he got a further letter of immunity. Isn't that true?

A. Through discussions with his attorney, that's what he wanted, yes.

Q. And he got it. Right?

A. Like I say, I haven't seen the letter.

Q. Okay. As a result of your going to Grand Rapids, isn't it true that Judge Houk enjoined you from going back there again and talking to James Joseph? Isn't that true? You got served with a restraining order?

A. No, it's not.

Q. Dated December 19th?

A. No, I did not get served.

Q. You're aware that a restraining order was issued against you and others?

A. Yes, I am.

Q. Dated December 19, 1990?

A. I don't know the date on it.

APPENDIX N

APPENDIX N

The pertinent portions of AUSA Bruha argument from the March 19 & 21 1991 Suppression Hearing, pp. 3-5 read as follows:

"MR. SHAFER: Thank you.

And only one more matter before -- I think one more matter. Mr. Bruha in his opening comments indicated, if I understood him correctly, that the search warrant itself was not limited in time. If that's Mr. Bruha's position, that the search warrant was not limited in time, we have a new problem; and that is, we have a general search warrant which is illegal, and it must be suppressed for that reason. Either there are limitations within the search warrant as to time, which may at least on its face make it valid, or there is no limitation as to time. In other words, can you go back before 1989 or 1950 or whatever.

THE COURT: What's your position, Mr. Shafer, that it is limited as to time?

MR. SHAFER: My position, Your Honor -- I hate to argue against myself, but my position is that contained within the search warrant there are limitations that would prevent the police from seizing evidence prior to 1989.

THE COURT: Where is that?

MR. SHAFER: That would be contained within the affidavit portion of the search warrant because the allegations only go -- although we contest that there is probable cause, the affidavit purports probable cause only going back to May of 1989, nothing before that. If that's read in with the search

warrant, we have a limitation of 1989. If we do not read that into the search warrant, we have a general search warrant that must be suppressed.

THE COURT: Mr. Bruha.

MR. BRUHA: Well, the government disagrees, Your Honor.

First of all, this issue is outside the scope of this hearing. We've already had a suppression hearing on the scope of the search warrant, and the scope of the search warrant has been upheld by this Court. The search warrant on its face does not contain a limitation to 1989. Defense counsel has not sited [sic] any authority to the Court that the search warrant is limited to the date of information contained in the affidavit, and I would be interested if he can submit any such authority.

THE COURT: Well, the search warrant won't be dismissed on the basis of what Mr. Bruha thinks it calls for. The Court will have to make an independent judgment. Even if Mr. Bruha's position is it is not limited as to time, that doesn't make it so.

MR. SHAFER: Thank you, Your Honor.

MR. BRUHA: My point, Your Honor, is that it is not limited to time on its face in response to defense counsel's argument that it should be limited to 1989."

APPENDIX O

APPENDIX O

FINANCIAL RECORDS SEIZED FROM MT. HOPE HOUSE

LISTED AS ITEM NO.'S 42, 48, 50, 51, 64:

1. 2 page cash receipt report.

2. 4 page RHC 87-XX trust agreement.

3. Piece of white paper with irrevocable on it.

4. Portage Commerce Bank stock Cert. (100 shares).

5. Three AeroLift Inc. stock Cert. (16,714 shares).

6. Purchaser's copy of $2000.00 dollar money order (10-25-89).

7. Two receipts from AeroLift stock.

8. Waste Engineering Inc., stock (10,000 shares).

9. Business Loan agreement paper, 2 pages.

10. Eighty-nine (89) Capitol National monthly bank statements.

11. Seventeen pages of Gruntal & Co. statements for 1989.

12. Five pages titled Bob Baldori Ledger.

13. Six pages titled House Budget - Oakes Rd.

14. Three Capitol Nat. Bank past due notice.

15. Invoice for Chuck Berry backup in 88.

16. Cap. Nat. bank late notice for 89.

17. Five receipts from Gruntal & Co.

18. Four pages describing plant growth.

19. Three pages with Accounts and Codes.

20. McDonald & Co. receipt for 89.

21. Advest statement Account for 89.

22. Two pages of Consumer Loan agreement for 89.

23. Tan folder containing Consumers Power monthly bills paid 89.

24. Tan folder titled Budget.

25. Tan folder titled Colkin 1989.

26. Tan folder titled Auto Owners Insurance bills and receipts marked paid.

27. Farmers Ins. Exchange bill.

28. Tan folder titled Taxes paid 89 containing receipt.

29. Michigan Annual report extension paper.

30. Copy of check made out to Greg White And Assoc.

31. Tan folder titled Misc. paid bills 1989 containing 60 Misc. receipts for 89.

32. Yellow piece of paper with COD on it date 89.

33. Tan folder titled Teleconnect paid 1989 containing monthly bills for 89.

34. Tan folder titled Greei White Ins. containing Misc. bills and receipts for

Farmers Ins. for 89.

35. Tan folder Titled 1989 Michigan Bell 6444 paid containing bills for 89.

36. Tan folder titled 1989 Michigan Bell 6644 paid containing bills for 89.

37. Tan folder titled 1989 Michigan Bell 6555 paid containing bills for 89.

38. Farmers Ins. group folder with information on insurance inside.

39. Brown folder titled JJ Cimino Collections containing 2 past due account notices.

40. Tan folder titled Blue Swan Pub (lined Out) and replaced with Consumers Power/1990, Oakes Rd.

41. Tan folder titled BMI Corr (lined out) and replaced with Shiawassee Co. Telephone Bills paid /90, containing monthly bill receipts (one receipt).

42. Nine Capitol Nat. Bank envelopes.

43. One Cap. Nat. Bank envelope with account # on it.

44. Tan folder titled Capitol National Loan.

45. Tan folder titled Capitol Nat. Bank Deposit Slips 89.

46. White paper stating the word House.

47. White piece of paper titled Bob Baldori And Associates.

48. White envelope dated 90 containing Cellular stock information.

49. Two page estimate titled Plywood Sale Window & Door Co. in 89.

50. Alcoa aluminum pamphlet.

51. One page titled bob Baldori TSS part usage list dated 89.

52. Envelope containing Gruntal & Co. information.

53. Tan folder titled Baldori Ins. - Life containing a life ins. form for 89.

54. Tan folder titled Income tax forms containing and 89 blank income tax forms and schedules and Sales Tax license.

55. Fourteen-page Telephone number listing.

56. Tan folder titled Cellular Phone Information containing 89 Investment summary.

57. One statement from Dyer Well drilling dated in 89.

59. Two pages containing cabinet appraisal and sizes.

60. One page of telephone memo sheet from Lansing sound dated in 1989.

61. Checking receipt book for Baldori dated 10-1-89.

62. One page payers request for Taxpayer Identification # for 1989.

63. One hundred seventy-five (175) canceled checks from First of America for Lansing Sound Studio Account for 1988 and 1989.

64. Tan folder.

65. One orange folder containing 11 Misc. receipts and cash flow statement ranging in years from 1981 to 1982. Literature from Gruntal and Co. and Advest for 1990.

66. Board of Water and Light bill dated 1982.

67. Receipt to Lansing sound from Daytimers Inc. dated Jan. 90.

68. Tan folder titled check stubs 89 containing four Mich. National Corp. Stubs and one United Parcel stub.

69. Tan folder titled 1st of America statements/checks 89 containing 23 account statements from 1st of America and eight deposit slips to Capitol National, six notices of overdraft from 1st of America, One notice of insufficient funds from Capitol National, One funds transfer notice from Capitol National.

70. Tan folder titled JT Trust containing Literature from Gruntal and Co., Literature from Provident Financial processing Corp., literature from Home Group Trust, McCaw Cellular Communications, letter from Regional Clearing Corp. dated in 89, share owner vote authorization form dated in 89.

71. Tan folder titled McCaw Cellular containing literature about 1988 Annual report.

72. One Manila envelope containing literature from Tri Steel structures, four pieces of paper from Capitol National, two pieces of paper from Gruntal and Co. dated 1989, one page balance sheet of assets dated in 1989, letter from Mid-State title company dated in 1989, copy of telegram dated 1989, copy of Estoppel Cert. dated 1989, two page copy of House Budget of Oakes Road.

73. Shipping order from Mail Box, Etc.

74. Manila envelope containing 306 misc. 1988 receipts, seven misc. pieces of paper.

75. Twelve Misc. 1989 receipts.

76. Tan folder titled Legal Research Corp. containing 16 pages of billings for research and research for 1988.

77. Tan folder titled Capitol National bank 1986 containing stock information from Merrill Lynch, Mosley Securities Corp., Thompson & McKinnon, statement of monthly checking accounts from Capitol National Bank for 1986, consumer promissory notes from Capitol National Bank for 1986, ten notice of overdraft statement from 1st of America, two lien on property notice for loan and termination notice from 1983, receipts of Securities delivered from Baldori dated 1986, canceled check from 1st of America dated in 1986, two slips from 1st of America dated in 1986, three customer receipts from East Lansing State Bank from 1986, the Exchange, loan papers from 1986, 14 billing from Capitol National Bank dated 1986, 47 deposit slips for Cap. National from 1986, 18 statements from Cap. National Bank for handling charges for 1986, two notification of checks returned for NSF, one credit account for NSF notice, one error in deposit slip, one payment notice for 1986 from Cap. National Bank, Baldori two-page balance asset sheet for 1986, two disclosure statement for loans for 1986, Gruntal and Co. transfer form.

78. Tan folder titled Portage Bank containing Literature about the bank dated 1989.

79. Tan folder titled Miscellaneous Paid Bills containing 69 miscellaneous bills and receipts for the 1987 and 1988.

80. Tan folder titled Marva, George containing two page billing from George Marva, paid date of 2/15/88.

81. Tan folder titled Gruntal Money Market containing a dividend check from CEF Money Market for $.41.

82. Seven miscellaneous receipts, correspondence and literature together.

83. Tan folder titled Capitol National Notes containing 16 deposit slips dated 1988 from Capitol National Bank, one statement of miscellaneous income for 1987, statement from Capitol National Bank, dated 1/21/89, 12 pages of Lansing Sound P&L statement for 1988, 1981 through 1984 balance sheets for Lansing Sound Studio, 23 pages of First of America checking account for 1988, one page titled Total for 1986 Outstanding Code, four pages dated 1988, Mosley account statement for 12/31/87 through 3/31/88, four pages of Lansing Sound Studio statements from Capitol National Bank for 1988, one page of Lansing Sound Studio statement from Capitol National Bank for December 1987, three pages of Advest statement accounts for 1988, one page Gruntal Company statement for December 1988, two page statement from Cooley Lawyer's Credit Union for June and December 1988, five page statement from Loan Servicing Center dated February 1988 and May 1988, two loan payment receipts from Capitol National Bank dated November 1988, notice from Capitol National Bank dated 5/30/88, notice from Capitol National Bank dated 8/28/88, three pieces of paper from Capitol National Bank indicating payment due notices, three Consumer promissory notes from Capitol National Bank for 1988, one Consumer promissory note from Capitol National Bank for 1987, 13 pages titled bob Baldori account ledger dated 1988 and 1989, one gold-colored account ledger dated in 1988, one

white piece of paper titled colkin Associates not dated, 17 pages of account statements from First of America dated 1988, 13 pages of account statements from Capitol National Bank dated 1988, one cashier's check payable to Robert Baldori remitter Lansing Sound for $7,000.00 dated 11/14/88, two fund transfer notice from Capitol National Bank dated in 1988, 20 NSF notices from Capitol National Bank dated 1988, one certificate from Omaha Financial Life Insurance company dated 1988, one letter from Capitol National Bank.

84. Tan folder titled Colkin containing one piece of paper with Bob's Calls at the top, one piece of paper titled Monica's Time Divisions, one piece of paper with a written note to Bob.

85. One manila envelope titled 1988 First of America Bank Statements containing one tan folder titled one same - empty.

86. Tan folder titled 1988 Log Sheets containing 85 pages of Lansing Sound Studio Client Log.

87. One manila envelope titled General ledger Profit & Loss 1988 Lansing Sound Studio - empty.

88. Tan folder titled Spring Paid 1988 containing monthly bills for 1987-1988 from U.S. Spring and one pamphlet for FON business.

89. One tan folder titled Board of Water and Light bill stubs and past due notices for the address of 1556 Snyder Road dated 1988.

90. One tan folder titled Mich Bell Paid 6444 containing 12 Michigan Bell statements of charges and one Michigan Bell work order.

91. One ta folder titled Capitol National

Bank 1988 - empty.

92. One tan folder titled Capitol National Bank Statements containing one past due notice dated July of 1988.

93. One tan folder titled Loan Info. containing one Omaha Financial Life Insurance Rider.

94. One tan folder titled Spring Not Paid 1988 containing U.S. Spring 1987-1988 phone bills.

95. One tan folder titled Loan Service Center containing four letterhead correspondence from "The Loan Servicing Center" and one pink envelope.

96. One tan folder titled Student Loans containing five notices of accounts due payable to SLMA ALAS/PLUS, five pieces of correspondence letterhead of the Loan Servicing Center, literature from Sallie Mae, one sheet of stickers of Hemar Service Corporation.

97. One tan folder titled Duncan Duplication 1988 paid bills containing message correspondence from Lansing Sound Studio, one shipping/billing from Duncan Electronics Division, one invoice from Duncan Quality Duplication, Incorporated.

98. One tan folder titled DBS Incorp. containing one invoice from DBX and one message to DBX dated 1988.

99. One tan folder titled 1988 Granger Paid containing four Granger receipts for 1988.

100. One tan folder titled AVD Invoices Paid 1988 containing six paid invoices from Audio Video Distributors, a two-page bill from

National Business Furniture, one Audio Video Distributors account credit form.

101. One tan folder titled Consumer Power Paid 1988 18 Consumer Power bills for 1988, two 1987 Consumer Power bills containing in an envelope, and one letter of correspondence from Consumer Power.

102. One tan folder titled Michigan Bell Paid 6644 containing monthly telephone bills for 1988 for number 351-6644.

103. One tan folder titled 1988 Paid Phone-6555 containing monthly telephone bills for 1988 for number 351-6555.

104. One tan folder titled Consumer Power Unpaid 1988 containing one June 1988 Consumer Power bill.

105. One tan folder titled Miscellaneous Unpaid Bills 1988 containing two statements from Lansing Advertisement Club dated in 1988, and one bill from Duncan Electronics dated in 1988.

106. One tan folder titled Lansing State Journal Paid Bills containing 11 receipts for the Lansing State Journal.

107. One tan folder titled Smith Tree and Landscape containing four bills/paid statements.

108. One tan folder titled Pitney/Bowes containing one bill to Colkin Associates dated March of 1988.

109. One tan folder titled Auto Owners Insurance Bills, Etc., containing eight billing notices, two policies for vehicles, and Auto Owners envelopes.

110. One tan folder titled Ozoteq, Inc., containing literature from Ozoteq, Inc.

111. One tan folder titled TeleConnect Paid 1988 Long Distance containing three itemized phone call and billing notices, one letterhead correspondence from TeleConnect, USA.

112. One white envelope from Aerolift Corp. containing 1988 annual report and literature.

113. One express mail receipt.

114. One notice from IRS dated August of 1988 to Robert Baldori.

115. A copy of a cashier's check from Lansing Sound Studio payable to Bob Baldori for $3,000.00, a notice of nonsufficient funds from Capitol National Bank dated in 1988, two notices from First of America for overdrafts.

116. One tan folder titled spartan Travel containing three travel agenda envelopes.

117. 1988 tax books and instructions, one white envelope from the IRS containing a piece of paper indicating that tax return is overdue, one letter from Michigan Tax Tribunal with attached tax forms dated 1988.

118. One tan folder titled Purchase Orders Invoices containing two Aviso, Incorp. purchase orders, one All-State Legal Supply Company invoice, one S&S Custom Tape invoice, one CRT invoice, one Spartan Travel credit invoice, one Neotek receipt, one repair receipt from Bud Kouts Honda, one repair receipt from Hedy's Towing-Snow Plowing.

119. Two invoices from Avios, Incorporated dated 1986, two invoices from Independence One Bank dated 1986, one invoice from WSYM TW dated 1986, one statement pertaining to

possible loan dated 1986.

120. One tan folder titled Aerolift containing two envelopes with letterhead of Aerolift, Incorporated containing 19 pieces of paper correspondence from Aerolift, Incorporated.

121. One folder from Aerolift containing 1985 annual report.

122. One green hanging file folder containing the following: one tan folder titled United Cable T.V. which contained a statement, a tan folder titled IRS which contained letter of tax due from Township of meridian, a tan folder titled Snyder Road, East Lansing/Jean Strandness, containing three 3x5 index cards with figures on them, a W-9 form, correspondence letterhead from Merrill-Lynch, one Gruntal business envelope, one tan folder titled National Bank of Chicago 1986 containing one Exchange Cash Station card, four checks from the Exchange, two records of all charges, one Cash Station PIN number document, one application from the Exchange dated September 2, 1986, one tan folder titled Thompson-McK containing substitute from W-9, two pieces of correspondence from Thompson-McKinnon Securities, Inc., one tan folder titled Merrill-Lynch containing invitation to Michigan Festival, one tan folder titled First of America LSS 1986 containing certificate from Omaha Life Insurance dated 1986, one overdraft statement from First of America, certificate from Omaha Life Insurance dated January 1986, certificate from Omaha Life Insurance dated June 1986, white envelope from the IRS containing second request for tax return.

123. Eighty-one (81) canceled 1987 checks from First of America.

124. One white envelope titled miscellaneous

receipts 1985-1986 containing six receipts, one note from Bob Baldori to Minnie dated 1986.

125. One white piece of paper with 1986 on it.

126. One white piece of paper from the IRS dated 1986.

127. One hundred three (103) canceled checks for 1985 from Capitol National Bank.

128. Canceled checks no.s 160 through 243, from Capitol National Bank for 1984 and 1985.

129. Canceled checks no.s 734 through 833, from Capitol National Bank for 1988, 11 deposit slips for Capitol National Bank, one credit slip for Capitol national Bank, three Capitol National Bank transaction receipts.

130. One canceled check from Capitol National Bank (No. 403).

131. Bank check records from check no.s 401 through 805 for 1984.

132. One transaction register from check no.s 413 through 562 dated 1986.

133. Five canceled checks from Capitol National Bank.

134. Check record from check no. 701 through check no. 1105 dated 1984 and 1985.

135. Check record from check no.s 101 through 505 dated 1983 and 1984.

136. 218 canceled checks dated 1988 from First of America and 44 customer transaction receipts from First of America rubberbanded together.

137. 171 canceled checks from Capitol National Bank dated January 1986 and December 1987.

138. Brown envelope containing 617 deposit slips from years 1976, 77, 78, 79.

139. Brown envelope containing 91 slips containing checks written on account for years 1969, 1970, 3 deposit slips.

140. One check register documenting checks written on account from 12-19-88 thru 1-15-90, Lansing Sound Studio account, 14 canceled checks, two deposit slips, one paid cash receipt dated 1-3-90.

141. Manila envelope titled 1980 deposit receipts containing 383 deposit receipts from East Lansing State Bank.

142. One deluxe box titled 1974 deposit receipts containing 226 deposit receipts from East Lansing State Bank, eight copies of unsecured notes, five copies of collateral notes, one check stub, two misc. receipts, cashiers checks receipt, two correspondence from ELSB for safety deposit box, loan notification paper, one misc. note.

143. Blank checks for Lansing Sound Studio, check # 1776 through 1800.

144. One manila envelope addressed to Jeff Abood - empty.

145. Two-page letter titled Bob Baldori Asset Description.

146. Nine-page telephone list.

147. One Beetle Bailey cartoon from a newspaper.

148. Nine-page telephone list.

149. One-page written net worth.

150. One advertisement cut out of a newspaper.

151. A tan envelope with Lansing Sound Studio logo with writing of LSS 1981 Deposit Receipts which contains 96 deposit receipts to East Lansing State Bank.

152. One brown expanding folder - empty.

153. One envelope with Lansing Sound Studio logo containing 81 East Lansing State Bank deposit slips dated in 1980, two receipts dated in 1980, three check registers - one titled 74-75, one titled 75-76, and one 76-78.

154. Various items which had been contained in an evidence envelope and identified as item no. 51 and consisting of: various correspondence for notification of unpaid federal income tax from the IRS, one correspondence letter from Capitol National Bank, owners manual for a Sound Design telephone, correspondence from Thompson-McKinnon, correspondence from Gruntal & Co., one miscellaneous note, one guest receipt, two hotel receipts from las Brisas, Acapulco, and two miscellaneous receipts.

155. One tan folder titled Miscellaneous (no year) containing three check stubs, one check register titled The Exchange with five deposit slips, one limited warranty card, PIN number from Capitol National Bank, cash receipt from Cooley Law School, receipt from Big George's Home Appliance Mart (no date), letterhead from East Lansing State Bank in reference to a mortgage loan analysis, one envelope title Remarkable Products, Inc., three index cards, one computer printout with the word Aerolift Curry, one pad of note paper.

156. One manila envelope with a return address

to the Michigan Department of Treasury containing literature for Small Business Tax Deductions.

157. One tan folder titled Telephone Info. containing 16 pages of telephone numbers which had been contained in an evidence envelope and identified as item no. 51.

158. One tan folder titled Waste Engineering containing 18 pages of summary information.

159. Three green hanging file folders - empty.

160. One yellow folder with writing on it which had been contained in an evidence envelope and identified as item no. 51.

161. Two pages of 1989 Michigan Annual Report forms.

162. IRS information form.

163. Four blank pieces of white paper.

164. One white piece of paper with numbers in a row on it.

165. Eight tan folders - empty.

166. One gold folder with CHEM written on it.

167. One brown box bottom.

168. One piece of paper that has miscellaneous written on it (no year).

169. One tan folder titled 1987 Log Sheets containing 28 pages of musician client time sheets.

170. One magazine entitled New York Time Magazine Home Design dated April 1987.

171. One manila envelope titled 1987 Miscellaneous Receipts containing 185 miscellaneous receipts for 1987 and 1988.

172. One manila envelope titled Miscellaneous Paid Invoices for 1987 containing 17 miscellaneous receipts, one-page ledger titled Kevin Wilson/Bobbie Adams, 15 pages of music client time sheets, two blank envelopes.

173. 1987 Michigan tax instruction booklet.

174. Form letter from the Department of Treasury dated 1988.

175. Eleven (11) miscellaneous receipts for 1987.

176. One brown expanding folder - empty.

177. One tan folder titled Yellow Pages Advertisement Agreement containing two directory receipts dated in 1988, attached to the tan folder are five pages of invoices from Audio Video Distributor and one order form from Duncan Quality Duplication.

178. One tan folder - no title - containing one paid receipt from 1987.

179. One tan folder - no title - containing five receipts from 1987.

180. One tan folder - no title - containing 29 miscellaneous receipts for 1987.

181. One tan folder - no title - containing 26 miscellaneous receipts.

182. One tan folder - no title - containing 14 miscellaneous receipts for 1987.

183. One tan folder - no title - containing three miscellaneous receipts, one Boogie Bob

message, a yellow piece of note paper containing numbers, a two-page letter titled Boogie Bob and Associates and Boog's report on it containing miscellaneous expenditures and amounts (no date), a two-page paper titled Boog's report containing miscellaneous expenses and amounts.

184. Two envelopes from Mosley containing literature both dated in 1987.

185. Cop of a notice to creditors and stockholders from Top Brass Enterprises.

186. One piece of paper titled Aerolift titled 1987.

187. One tan folder titled April 1987 containing phone bills, one Consumer Power bill, one turn-off notice, seven pages titled U.S. Spring phone service, one piece of paper with copies of canceled check 1210 from Lansing Sound Studio and two copies of a U.S. Spring bill dated in 1987, one notice of telephone disconnect for 1987.

188. One tan folder titled July 1987 containing one Consumer Power bill, one Michigan Bell bill, one Granger bill, and one U.S. Sprint bill.

189. One tan folder titled June 1987 containing one Consumer Power bill, one Michigan Bell bill, one U.S. Sprint bill.

190. One tan folder titled May 1987 containing one Consumer Power bill, one Michigan Bell bill, one U.S. Sprint bill, and a Consumer Power turn-off bill.

191. One tan folder titled February 1987 containing one U.S. Spring bill and one Michigan Bell bill.

192. One tan folder titled March 1987 containing one Michigan Bell bill.

193. One tan folder titled October 1987 containing one Granger bill, one Consumer Power bill, a refund credit slip for Consumer Power, one U.S. Spring bill, a bill from Allnet Communications, a one-page letter to Allnet, two-page memo to Allnet.

194. One tan folder title September 1987 containing one U.S. Sprint bill, one Michigan Bell bill, one Consumer Power bill.

195. One tan folder titled September 1987 - empty.

196. One tan folder titled August 1987 containing one Consumer's Power bill, one U.S. Sprint bill, one Michigan Bell bill, one AT&T bill.

197. One tan folder titled January 1987 containing one U.S. Sprint bill.

198. Two-page Boogie Bob asset description.

199. Six-page Boogie Bob balance sheet and expenses for 1989.

200. Aerolift 1987 Annual Report.

201. Yellow file divider title GEN transaction.

202. One tan folder titled Loan Agreements 1983 containing one East Lansing State Bank Mortgage Department Annual Statement for 1983, 24 sheets of paper containing a Boogie Bob balance sheet and personalized loan computer notes.

203. One tan folder titled Capitol National Bank Statements/Receipts - LSS containing 14

First of America account statements, one VISA bill, 17 deposit slips from First of America dated 1987, a copy of canceled check dated 1987, two overdraft notices from First of America dated 1987, two deposit slips from Bank One dated 1987, two deposit slips from Capitol national Bank dated 1987, three 1987 Statement of Income reports, six Boarshead Theater pay stubs, 15 Capitol National Bank account statements dated 1987, three-page account statement from Thompson-McKinnon Securities, four-page Boogie Bob report of expenses (no date), letter from First of Michigan Corporation dated 1987, two-page proposal from Donald Placer dated May 2, 1987, proposal from Magnotta Builders dated April 10, 1985, 12 pages of First of America checking account expenditures, 17 page Lansing Sound Studio balance sheet, one consumer promissory note from Capitol National Bank dated 1986, two Cooley Credit Union account statements dated 1987, Department of Education loan form dated 1987, Loan Servicing Center loan form dated 1987, three Thompson-McKinnon stock receipts dated 1987, copy of Thompson-McKinnon payment to Robert Baldori, three miscellaneous Thompson-McKinnon receipts dated 1987, seven Mosley account statements dated 1987, two Mosley purchase confirmation slips for 1987, four cash equivalent fund account statements for 1987, seven First of America checking account statements for 1987, three-page cash voucher account statement for 1987, one statement from Capitol National Bank dated 1987.

204. Tan folder titled plans containing a tan folder titled invoices/receipts containing invoice slip from MidWest power equipment, Baker plastic company product warranty, invoice receipt from American Homecrafters, invoice from Armour, 4 invoices from Smith Tree and Landscape Ser, 2 pages of Installation of sinks, invoice receipt from

Hammond Farms, 2 invoices from Carpet Fair, invoice from Vinylast Inc. iprice [sic] list of unk. origin, 5 pages from valley lumber, Tan folder titled electrical containing 7 sheets of graph paper showing diagrams, 2 pieces paper with diagrams on it, Mansfield plumbing warranty, Central Mich. Lumber advertisement paper, A pad of graph paper, Advertisement for Gazabo's, 28 pieces of graphs and loose leaf papers with diagrams, 2 pieces of graph paper with drawings enclosed in plastic, one envelope titled Monterey Domes containing letter to Baldori.

205. Tan folder containing one white piece of paper with 1987 on it, Tan folder with 1985 on it.

206. One tan folder titled DVD invoices not paid 1988, empty.

207. One tan folder titled Cap. Nat. Bank BB 1984, containing 23 deposit slips dated 1984, 5 credit slips from Cap. Nat. Bank dated 1984, 2 payment due notices from Cap. Nat. Bank dated 1984, 1985, one slip with ATM card # on it, 3 interest paid slips for 1984, interest paid slip from East Lans. State Bank for 1984, Misc. income receipt for 1984, 1099 G form recipients of income tax refund.

208. One tan folder title Cap. nat. Bank FP 85 thru 87, empty.

209. One tan folder titled 1st of America statement/receipts, LSS 1987, empty.

210. Twenty-three page account statement from 1st of America for 1984, billing invoice from The Exchange, installment loan agreement from Capitol Nat. Bank, two page computer printout titled 1984 Jan. bank entries, two page printout titled 1984 February bank entries, two page printout titled 84 March entries, two

page printout titled 1984 April entries, two-page computer printout titled May 1984 bank entries, two page printout titled Bank entries for June 1984, two-page computer printout titled July/August 1984 bank entries, two-page computer printout titled September 1984 bank entries, one-page computer printout titled October 1984 bank entries, two-page computer printout titled November 1984 bank entries, two-page computer printout titled December 1984 bank entries, two-page computer printout for January 1985 bank entries, two-page computer printout for February 1985 bank entries, two-page computer printout for March 1985 bank entries, two-page computer printout for April 1985 bank entries, two-page computer printout for May 1985 bank entries, two-page computer printout for June 1985 bank entries, two-page computer printout for July 1985 bank entries, two-page computer printout for August 1985 bank entries, two-page computer printout for September 1985 bank entries, two-page computer printout for October 1985 bank entries, two-page computer printout for November 1985 bank entries, two-page computer printout for December 1985 bank entries.

211. Two 1984 tax return booklets.

212. Four-page expense ledger dated July 1984.

213. One envelope entitled College Scholarship Service containing $7.00 check dated 1984.

214. Six pieces of correspondence from the IRS, one disclosure statement for loans.

215. One blank piece of paper entitled 1983.

216. One tan folder titled East Lansing State Bank containing installment loan agreement from Capitol National Bank dated 1983, two East Lansing State Bank installment loan receipts dated 1983, one white envelope

containing 27 miscellaneous receipts.

217. Four envelopes containing correspondence from the IRS.

218. One check stub from Thomas Cooley Law School.

219. Letter of correspondence from Richard J. Albert.

220. Two copies of consumer promissory notes from Capitol National Bank.

221. Guaranteed Student Loan Interim Note.

222. One copy of installment loan agreement from American Bank and Trust.

223. Two-page bill from plywood sales dated November 1989.

224. Two-page document from Shiawassee County (one is an application for building permit dated October 1989).

225. Two-page estimate from Plywood Sales dated October 1989.

226. Yellow piece of paper titled Window Totals.

227. Seven-page 1984 U.S. Individual Tax return.

228. Two IRS balance due form.

229. One Rite-Aid bag.

230. Six-page 1983 U.S. Individual tax return.

231. Two-page explanation of adjustment from IRS dated 1983.

232. One white piece of paper titled Richard J. Albert for accounting services dated December 1986.

233. Nine-page telephone/address list dated November 1987.

234. One overdraft notice from Exchange National Bank of Chicago dated 1984.

235. Fifty-five (55) canceled checks from the Exchange.

236. One deposit slip from Capitol National Bank dated 1983.

237. Six checking deposit receipts from the Exchange dated 1984.

238. One finance charge notice from Capitol National Bank dated 1984.

239. One check stub from the State of Michigan dated 1983.

240. One cash voucher from Cooley Law School dated 1984.

241. One account statement from Cooley Lawyer's Credit Union dated 10/1/84 - 1/1/85.

242. One check stub from Thomas M. Cooley Law School.

243. Two check stubs from City of East Lansing.

244. One tan folder titled Audit Letters - empty.

245. One tan folder titled Capitol National Bank 1985 BB - empty.

246. One tan folder titled Miscellaneous -

empty.

247. One tan folder titled Pay Stubs - empty.

248. One tan folder titled Citibank - Statements - empty.

249. One tan folder titled Cooley Law containing a blank savings transaction record book, two newsletters from Cooley Lawyer's Credit Union.

250. One tan folder titled National Bank of Chicago BB 1984-1985 containing one white envelope, two pieces of correspondence from the Exchange, and a Customer Calling Guide for Michigan Bell.

251. One green hanging file folder titled 1985 containing 17 overdraft notices from Capitol National Bank dated 1985, 26 deposit slips for Capitol National Bank dated 1985, one loan contract from the Exchange Bank, one 1985 miscellaneous income statement, one check stub dated 1985, miscellaneous receipt dated 1989, 1985-86 MSU Wrestling schedule card, one piece of paper entitled Music Company Inc., one car repair receipt from Vette Customs dated 1985, 1985 Income Tax forms and instruction booklet, one share draft balance statement from Cooley Layer's Credit Union, one Direct Express Mail receipt dated 1985, receipt dated 1985 for Plat book, account statement for United Cable, disclosure statement for loan application dated October 1985, one Passport, nine account statements for Capitol National Bank dated 1985, two receipts from Cooley Lawyer's Credit Union dated 1985, two account statements from Cooley Lawyer's Credit Union dated 1985, three pages of account statements from the Exchange, two pages of Commercial Loan Interest statements from the Exchange, 21 pages of First of America account statements dated 1984 and 1985, two East Lansing State Bank account

statements dated 1985, four deposit slips East Lansing State Bank dated 1985, December tax due notice from East Lansing State Bank dated 1985, cashier's check receipt dated November 1985, two Merrill-Lynch receipts dated 1985, copy of the two Merrill-Lynch receipts listed above, receipt from Broadcast Music dated June 1985, financial aid form from Cooley Law School, three copies of Merrill-Lynch account statements dated 1985, four Citibank VISA bills dated 1985, two Manley, Bennett & McDonald account statements dated 1986, three Mosley account statements dated 1985, one Mosley literature packet dated 1985.

252. One brown accordion folder containing 581 miscellaneous receipts from 1985, 1986 and 1987.

253. One brown accordion folder containing 181 miscellaneous receipts from 1989, one piece of paper with computer writing, one order form for Instyprints.

254. One Spartan Travel itinerary.

255. One sale advertisement from OPUS.

256. One order form for Bob Baldori - company unknown.

257. One Certificate of Persons Conducting Business under an assumed name for Kelly Boyle.

258. One ring-side wrestling advertisement.

259. Two pages of a vendor application (one original and one carbon).

260. Nineteen pages of a bill dated 12/28/89 from TeleCom, USA.

261. One Advice of Interest form from Capitol

National Bank.

262. One Citibank Visa Card in the name of Robert Baldori.

263. One Capitol National Bank money card in the name of Robert Baldori.

264. One Teleconnect All Call America card in the name of Robert Baldori.

265. A letter to Mr. Miller from Bob Baldori, ref. Gregory Gutierrez.

266. An addendum to the above letter/agreement.

267. An invoice for services to Greg Gutierrez.

268. Two envelopes addressed to Gret Gutierrez.

269. 279 - 3.5" discs, 157 5.25" discs, and 16 containers.

RECEIPT FOR PROPERTY

I, Guy L. Sweet, received the computer discs listed on the attached inventory from IRS Agent Patrick Healey on Thursday, January 24, 1991. These disks were locked inside an evidence cabinet which is inside a locked office at the Ingham County Prosecutor's Office, 303 West Kalamazoo Street, Lansing,

Ingham County, Michigan.

Guy L. Sweet
Assistant Prosecuting Attorney

Dated: January 24, 1991

Following is a list of file boxes of disks seized from Robert Baldori's home in January 1990 that were in possession of Special agent Pat Healey.

Container 1 19 disks 3 1/2 Utilities-WB, Kickstarter, Boot, Extras, Demos

1. Amiga Boot
2. Amiga Boot
3. Amiga Kickstart 1.1
4. Amiga Workbench 500-2000 Series 1.2
5. Amiga Workbench 1.1
6. Amiga Workbench Barebones
7. Amiga Workbench 1.3
8. Amiga Library
9. Amiga Kalescope
10. Amiga Kickstarter 1.3
11. Amiga Boot
12. Amiga AM-3370106553
13. Amiga Manual
14. Amiga Boot Dos 3.0 SC51
15. Amiga Workbench 1.2
16. Amiga Kickstart 1.2

17. Amiga Basic 1.2

18. Amiga Basic 1.2

19. Amiga Basic & Tutor

Container 2 29 Disks 5 1/4 No Label

1. LSS Accountant 94 Backup

2. LSS programs

3. LSS Accountant 1986 data

4. LSS Accountant 1984 2nd 1/2

5. LSS copy programs II plus V.2 Locksmith 2.0

67. Format I DOS 3.3

8. PFS file master disk

9. LSS Software

10. LSS multiplan

11. Bob accountant 39 backup

12. Accountant Ver. 5

13. Format II correspondence 1985

14. Appleworks WP Brief

15. Appleworks master with Semini Glossary

16. Prof. Kimble Nuisance

17. Record Agree R. Penn

18. Format II Bad disk

19. Applewriter IAF script 1984
20. Complete script applewriter II
21. IAF September 1983 script reversions
22. Format II date record agreement
23. IAF 1984 Jobe Carny
24. AP II Legal briefs
25. KB format II Disk 2
26. Gutenberg master
27. DBase II Blue Swan
28. Blank disk
29. Format II weed Bolero briefs
30. LSS Format II

Container 3 23 disks 3.5' No label

1. Utility disk - for the business accountant
2. BIZ acct program master 2nd disk
3. PFS Data client mailout mail #2
4. LSS Accountant 1989 backup data
5. LSS accountant 1989 master disk
6. DOS 3.3 system master Bob
7. PFS report
8. LSS Multiplan date

9. LSS accounting 1988 drive 2 backup date

10. LSS Accounting backup for the backup

11. LSS 1988 new master drive 2 data

12. LSS Accounting 1987 data disk drive 2

13. LSS Accounting 1987 backup disk

14. LSS accounting 1988 drive master data

15. LSS 1985 BIZ acct data

16. LSS Backup 1986

17. Hotstreak 1988 date

18. Hotstreak 1988 backup

19. Utility disk data backup to original

20. FAM 10 accounting programs BIZ acc 2nd disk

21. #3 FFS logs 5/10/84 Current

22. 1985 log LSS Studio Log

23. LSS Format II program

Container 4 39 disks 3.5
No Label (3 compartment container)

1. ARP 1.1 print driver & development Dr. Dougle

2 Amiga II Virus Killer

3 Maruader

4 WP normal boot

5 Workbench 1.3 98 Pro

6 Prowrite system

7 Amiga Textcraft

8 Amiga Textcraft configuration text plus

9 WB 88 on line

10 Blank

11. Learn

12. WP master 5.89

13. Superbase Pro 3 update

14. Print WP 10/88

15. WP-Vo 10-20 fully configured 98 10

16. on line

17. Excellence

18. Olga

19. Olga Workbench demos

20. clocks

21. DHO boot 1.3

22. Amiga Basic & Tutors

23. Superbase pers.

24. Climate Marauder II file 10

25. Wp library backup

26. Blue Swan date

27. Amiga Climate

28. Text Craft master elite

29. Pro write programs

30. Blank

31. DMO boot 1.3

32. Blank

33. TC Master Gemini fixhunk elite with demos, amiga configuration

34. WP print

35. Pro write system

36. Print

37. Word perfect library

38. Word perfect library

39. Word perfect library update

Container 5 19 disks 3.5 Graphics (including address label for 2719 Mt. Hope)

1. **Aegis Draw - Commodore Amiga**

2. **Aegis Draw - Commodore Amiga**

3. **Draw Plus data**

4. **Draw Plus AEG 15**

5. Draw 2000 3/31/89
6. Draw Math compressor version
7. Draw 2000 3/30/89
8. Draw 2000 3/30/89
9. Boog III draw & data disk/calendar/garden
10. Draw Plus data calendar
11. Book 2000 draw
12. WP library draw 2000 calendar data
13. Draw 2000 program disk
14. Draw 2000 data disk
15. AEGIS draw
16. AEGIS draw
17. Graphic raft
18. EAJ 10/28/87 deluxe print II baldori
19. EAJ 10/28/87 deluxe print key disk baldori

Container 6 16 disks 3.5 Wordperfect

1. Master date WP legal I
2. Master date WP Boog date legal
3. WP personal Boog personal journal; personal correspondence Swarts
4. speller thesaurus

5. wp pers backup

6. Blank

7. wp personal book IPERS

8. LEN - data

9. fameous

10. Word perfect WP Boog I Date III. bar

11. WP Boog data personals backup

12. WP Boog II data backup

13. WP Boog III entertainment K's boiler plate -fameous

14. WP Boog III entertainment K's boiler plate -fameous

15. WP Boog III entertainment K's boiler plate -fameous

16. Demo boot backup

Container 7 11 disks 3.5 Music

1. Or T's music software backup

2. Soundscope 1.4 w/wb 1.2 installed + smooth cloaker + fast tracker

3. Soundscope 1.4

4. Soundscope 1.4

5. Soundscope modules

6. Mimetics Soundscope

7. Music studio Ser #3001

8. Deluxe music construction set

9. Soundscope

10. Soundscope 1-3

11. DMCS

Container 8 50 disks 5.25 VS data fameous pres

1. Spectral graphics master chart

2. FAM IV 1984 BIZ Acc data disk

3. FAM IV BIZ Account backup 1984

4. FAM IV 1984

5. Spirit 1984 Acc

6. Accountant V.5 Alstar 1984 data

7. BIZ acc alstar 84 backup

8. Alstar V.5 Acc 1984 Backup

9. SA 1984 Biz acc backup

10. K38 Screen Art Business acc

11. Account Fameous Date 83

12. Account Spirit date 83

13. Account V.5 1983 unlocked allstar data 2nd disk

14. allstar account 83 data backup

15. account LSS V5 1983 2nd disk

16. Account Spirit 1981 data chart of

accounts

17. account spirit 1982
18. Hot Mix Biz Account single disk 84
19. Hot Mix 1983 account V5 data
20. OFS data IAF backup
21. Viscale VC 2088o-AP2 843 10845
22. Magical master
23. Magical data 83
24. Magical data 84
25. Screen Art FMS# files drive 2
26. FMS # screen Art drive 1
27. Pascal
28. Hot Mix FMS 81 data
29. Vistrend/Visaplot
30. Magic Window driver
31. Magic Window driver
32. Easywriter
33. Pascal 2
34. Account V.5 screen art backup
35. PFS data RC songs
36. Pascal #1
37. Diversi Dos

38. PFS system

39. Filer fast copy disk test & Disk speed

40. applewriter LSS data #

41. Applewriter II master Fern Floss 2 W pal & M print

42. Applewriter II LSS Data

43. PFS Data ADAC

44. Print Shop lib 1 & Print shop lib 2

45. Print Shop A program & B demo

46. Micro Illustrator

47. Locksmith 5.0

48. DB cal viscale interface (the business accountant by Decision Support software)

49. Action plan demo fitness profiles & Exercise program

50. Dos 3.3

Container 9 29 disks 3.5 Data base (with Address label 2719 Mt. Hope)

1. WP Boog Pers 1

2. Legal-1 8-89 RLS Legal 88 pers data

3. Superbase update

4. Maxiplan +

5. 88 PRi studio log

6. Maxiplan + plus

7. Superbase Pro form editor

8. Progressive peripheral + software

9. Amiga

10. Miamiga File Bob's address

11. Logis IIX examples

12. Miamiga File software

13. VIP professional

14. GIZ Mos 1.2

15. Log is tix

16. with Calendar

17. VIP Professional

18. NIMBUS record keeping for small business

19. NIMBUS record keeping for small business

20. Amiga Extras 1.3

21. Financial cookbook

22. Maxiplan +

23. Superbase data disk office backup legal bills receipts blue swan, LSS log sheets

24. Gozmos

25. PD software digest

26. Con Law II

27. Biz Orgs I

28. SB Pro Studio data repts 11/10

29. Wp-boot 11/10 studio 500

Container 11 76 disks 5.25 Wordstar master with mail merge

1. Biz account LSS 1984
2. Biz account Bob 1984 backup
3. Boogie Bob Inc Biz 1984
4. 88 1984 acc
5. Bob 1984 acc V5
6. Biz acc Bob 1984 April/Dec.
7. Acc Bob V5 1983 data
8. Acc Bob V5 1983 data & systems backup
9. Accountant ver 5 unlocked 1983 with 88 data
10. Accountant 2 disk 1983 Boogie Bob data backup
11. Biz acc master program 2 disks
12. Biz acc program 2 disks
13. Biz acc program only no date disk 2
14. The accountant "systems disk" Hot miz acc ver 5 master
15. Biz acc 2 disk master
16. The business accountant, a finance data base system by Decision Support Software
17. Accountant V5 system master broker
18. Business accountant V.5 master

19. Applewriter II preboot

20. Versa forum (3) report & (6) report work

21. Versa Forum (2) files & (5) tutorial

22. Versa Forum work disk

23. (a) IAF LSS versa forum August logsheet

24. Versa Forum disk 001 files disk backup 8-LSS Logsheet

25. Versa Forum I design program disk (4)copy/print

26. Versa forum disk 002 logsheet

27. Versa Forum filing disk 8K

28. Applewriter II system master Pal & Print

29. Visadex

30. Dessert mech LSM WAS data MDA

31. F-II CIV pro (a) classes

32. CPM system

33. Applewriter 1/87 G colburn nat. video comm. inc.

34. Titan tech

35. Tax advantages 1) side A 2) side B

36. 1) ASCII express 2) tele porter

37. Dbase II

38. 1) ASCII express 2) tele porter

39. Pro dos

40. Corp tax (A) classes 17

41. F II Corp tax (A) classes

42. F II bad? Corp tax (A) Classes 1-2

43. Criminal Pro

44. Criminal Pro final notes

45. FLL criminal pro (1) classes I (B) Classes II

46. Torts II (A) Classes

47. F II rest writing MCM

48. Rest & write AP II

49. Format II legal writing

50. Constitutional Law classes 1-10

51. IS correspondence

52. Constitutional Law

53. Torts I class 1-5

54. Torts I Class 7-14

55. Torts I Def-Out

56. Property II Classes 1-7

57. Property II classes 8-

58. Property II

59. F II Property I disk 2 class 20-25

60. Format II property class 11-19

61. F II Criminal

62. F II Criminal data

63. Criminal

64. Contracts II classes 1-7

65. Contracts II classes 8-

66. Contracts II Applewriter

67. Contracts II Format II

68. Contracts

69. Contracts I Format II data (3)

70. Contracts I Format II date (4)

71. Format II

72. WAP 10 math & Science

73. Finances I

74. Multiplan Bob monthly case

75. Multiplan Data

76. Ent aqeuels PFS

Container 12 4 disk 3.5' plus 3X"5" cards

Disks

1. Excellence

2. On line

3. Maruader II

4. Hacker for Kelly

Cards:

1. Advocacy-Civ Pro ADV ICP, Misc Civ Action, Drain Appeals, Giffith letter 10/28/86, Ad brief 1-4 Claim of appeal, cover sheet, Notice/pos
2. TNT- Giddings, Giddings, TNT-Wood, Drain Case
3. Law office mgt, Drain Case, Drain affidavits, MRT Class I, evidence, law office mart, Koeneg
4. Prof Pisp, Nat on this tape

Container 13 3.5' 5 disks

1. Grenon
2. One on one
3. Artic fox
4. Chess master
5. chess mate

Container 14 3.5" 12 disks small brown box

1. Library
2. WP 4/15/88

3. Games Missile command asteroids

4. Tunnel vision

5. Excellence W8

6. Print

7. Speller Bee

8. Master type

9. Oasis

10. Speller/thesaurus

11. Draw Plus 8-24-89 Drawer backup

12. Adrum

Gary Drown 1/9/91

APPENDIX P

APPENDIX P

Pertinent portions from Notes from Team Meeting Minutes.

Emergency Command Board Mtg.

Result: Lt. Rapp to conduct preliminary invest. Report back to command board on Mon. Aug. 6. Investigative Team (to be named) to follow up @ possible criminal investigation.

4:30 p.m. Interview @ Lt. Rapp/copy of first mention of missing pictures sometime after Paul's Dep. on 6/19. He advised Atty. Fox had questioned him. I discounted the questioning as having no factual basis.

7/11/90. Team Mtg. on 7/11. Paul asked for pictures back. No questions asked. Team member told by me that removal of such items during search warrants could result in termination from Metro.

APPENDIX Q

APPENDIX Q

Whitford's Note

Team Meeting Minutes

July 11, 1990

From Lt. Whitford:

When executing a search warrant, do not take anything out of the residence we shouldn't take. Whatever you take, put on the return. It could cost us a case. (Please return pictures in question to my desk drawer if it concerns you, no questions asked).

*Charlie interjected that actions of this kind could shorten a person's career here at Metro.

APPENDIX R

APPENDIX R

The following is an excerpt from the Supplemental Report prepared by Capt. Rapp (R.61 of the District Court Record):

INTERVIEW: Mr. Tom Warren
Assistant Prosecuting Attorney

LOCATION: 303 W. Kalamazoo

DATE/TIME:

APA Warren was the on-call Prosecutor during the week of January 19-26, 1990. On January 25, 1990, APA Warren was at the Metro Office issuing a search warrant. After the warrant was issued, APA Warren went into the office area where the investigators have their desks. APA Warren was asked by an unknown officer if he wanted to see a picture of Kelly Boyle with a dildo up her ass. The Officer took APA Warren over to the first desk west of the west door on the north wall (Officer Les Diebolt's desk). The officer looked through the desk but could not find the picture.

This information was not pertinent to APA Warren until Prosecutor Donald Martin

mentioned the Metro investigation to him within the last two weeks.

Lieutenant McCord supplied the attached list of Officers who worked on the warrant January 25, 1990.

* * *

The following is an excerpt from the Supplemental Police Report, R. 61 of the District Court Record, p. 91:

INTERVIEW: John Cipriani
Assistant Prosecuting Attorney

LOCATION: Criminal Intelligence Unit Office

DATE/TIME: August 16, 1990, 1050 Hours

APA Cipriani was the on call Prosecutor on January 18, 1990. APA Cipriani went to the Metro Office to write a search warrant on this date. While working on the search warrant, an unremembered officer brought APA Cipriani two slides. One slide was a female bent over at the waist and she had a dildo inserted in her anus. The second slide showed a vagina with some type of rings attached. When shown the slides APA Cipriani was sitting at Deputy Fred

Sandburg's desk located in the northeast corner of the main office. APA Cipriani thought Deputy Sandburg and Deputy Larry Harrison were sitting with him while he wrote the warrant.

After completing the warrant, APA Cipriani went to the west end of the office. APA Cipriani estimates six to eight officers were in this area passing around slides holding them up to the light. The slides were being taken from a box sitting out on a desk. The size of the box was estimated to be similar to a shoe box. APA Cipriani had the impression that the slides were evidence relating to a case. When APA Cipriani asked who the slides were, the officers would not tell him. APA Cipriani could not specifically remember the identity of the officers.

APPENDIX S

APPENDIX S

The following is an excerpt from the Supplemental Police Report, contained in R. 78 of the District Court record:

ADDITIONAL INFORMATION

During the week of September 23, 1990, I received a telephone call from Lieutenant Charles McCord. Lieutenant McCord advised ne that Lieutenant Jimmy Patrick had received a call from a confidential source. The source was concerned that Metro Supervisors were in trouble over the pornographic pictures removed from Robert Baldori's house. The source advised Lieutenant Patrick that he was in his front yard sometime in March or April of this year when Officer Les Diebolt stopped to talk to him. The source and Officer Diebolt had worked in Metro together. The source left Metro in August of 1989. While the Officers were talking, Officer Diebolt went to his vehicle and retrieved some pornographic slides. Officer Diebolt showed the slides to

the source. Officer Diebolt advised the source that the pornographic slides had come from Bob Baldori's house.

After receiving this information from Lieutenant McCord, I asked the Lieutenant if he would get back with Lieutenant Patrick. The purpose of this request was to determine if Lieutenant Patrick could re-interview the source and if the source would talk to me in reference to the Baldori case.

On October 11, 1990, Lieutenant Charles McCord contacted the undersigned by telephone and advised that Deputy Tim Doer would speak directly to the undersigned officer in reference to the incident listed above.

* * *

On November 5, 1990, I was able to meet with Deputy Tim Doerr from the Ingham County Sheriff's Department. At this time Deputy Doerr told the undersigned that he was in his front yard sometime in February, March or April of 1990. Officer Les Diebolt, driving

his assigned Metro vehicle, stopped by Deputy Doerr's house. After some small talk, Officer Diebolt went to his car and retrieved from either the trunk or the rear seat, a box of slides. Deputy Doerr remembered approximately twenty-five slides in total were given to him to look at. Officer Diebolt stated that the slides were from Baldori'S house. Deputy Doerr recalled the pornographic slides were of a white female with blond hair. He recalled poses of the female bent over with a dildo inserted into her rectum and some type of chains around her waist. Officer Diebolt did not tell Deputy Doerr why he had the pornographic slides nor did he say why or how they were removed from the Baldori house.

* * *

At approximately 1400 hours on November 27, 1990, the undersigned and Chief Assistant Kim Eddie met with Deputy Doerr at the Delhi Township Police Department. AT this time, Deputy Doerr reviewed his statement that he

had made to the undersigned on November 5, 1990. Deputy Doerr stated that in February, March or April of 1990, while out in the front yard of his residence, Officer Diebolt stopped by his house. Diebolt was driving his assigned Metro car, a blue Oldmobile [sic]. After a small conversation, Officer Diebolt went to either the trunk of the back seat of his assigned Metro vehicle and returned with what Deputy Doerr described as a small white box of slides: To the best of Deputy Doerr's recollection, he believed that Officer Diebolt advised him that the slides had come from the Baldori residence. Deputy Doerr did not recall any statements as to why Officer Diebolt had them in his possession. Again, Deputy Doerr was asked to describe the slides that he was shown. Deputy Doerr stated he believed there was a small white box, approximately 25 slides, his best recollection was that they were of a blond white female with a dildo inserted up her rectum with

chains around her waist. After describing the slides, the undersigned produced the slides that were retrieved from the Tri-County Metro Office and showed them to Deputy Doerr to see if he could recognize any of those slides as being the same that he had seen on the date in question. Deputy Doerr separated four of the slides from the box of slides provided him and believed that he recalled seeing those same slides shown to him by officer Diebolt.

APPENDIX T

APPENDIX T

The following are pertinent sections of the "Policy Governing Reverse Drug Transactions", R. 93, Ex. 7 of the District Court record:

"STATE OF MICHIGAN

DEPARTMENT OF STATE POLICE

Date: December 17, 1986

TO: Criminal Investigation Section Personnel

FROM: Major Lewis G. Smith, Commanding Officer, Investigative Services Division

SUBJECT: Policy Governing "Reverse Drug Transactions"

* * *

II. DEFINITION

A "Reverse Drug Transaction" is defined as the offering for sale of a controlled substance by an undercover police officer in the performance of his/her duty for the purpose of furthering a criminal investigation.

* * *

" 5. During the course of the actual reverse drug transaction, the drugs

presented for sale shall under no circumstances leave the immediate control of the undercover officer(s); ..."

* * *

"7. The reverse drug transaction shall be concluded and the defendant(s) arrested as soon as all of the elements of the anticipated criminal charge have been satisfied."

"B. This policy does not preclude departmental work units from joint reverse drug transactions with other legitimate investigative agencies. However, in such cases, the following additional controls shall be applied:

1. The undercover officer acting as the drug seller shall be a departmental work unit member.
2. All involved personnel (including those officers from other

investigative agencies) must be apprised of this policy and agree to comply with it."

APPENDIX U

APPENDIX U

The following are pertinent sections of the "Guidelines for Operation of the Tri-County Metro Narcotic Squad", R. 93, Ex. 8 of the District Court Record:

GUIDELINES FOR OPERATION

OF THE

TRI-COUNTY METRO NARCOTIC SQUAD

* * *

2. The control officer will then attempt to verify all of the information obtained from the confidential informant.

* * *

10. Uniform Officers: Each time a raid is conducted, uniform officers in whose jurisdiction the raid is being conducted should be assigned to the raid.

APPENDIX V

APPENDIX V

Pertinent portions of SWORN STATEMENT of JAMES R. JOSEPH, taken in Grand Rapids, Michigan on Sunday, October 21, 1990.

JAMES R. JOSEPH,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. SHAFER:

"Q. Please state your full name.

A. James R. Joseph."

* * *

"Q. Did you have a meeting with Dennis Langkos at some time after the meeting with Paul Whitford?

A. Yes.

Q. Okay, and at that meeting did the subject photographs come up?

A. I had a few meetings with him. At one of the meetings the subject of the photographs came up.

Q. When did that meeting take place?

A. A month or -- a month or two after.
Q. After what?

A. After the raid, or whatever you want to call it.

Q. Okay. After the search warrant was executed?

A. yeah.

Q. Where did that meeting take place?

A. At the FBI office."

* * *

QQ. Who was present at your meeting?

A. Just Denny Langkos and myself.

Q. Did Dennis Langkos show you any photographs?

A. Yes.

Q. And what did he show you?

A. A photograph of Kelly Boyle."

* * *

"Q. Okay. Could you describe the photograph that was shown to you?

A. It was a head shot from the neck up.

Q. Did you see anything, any clothing, or any devices, in the photograph?

A. Yeah.

Q. What did you see?

A. A choke collar."

* * *

"Q. Did you see where he obtained that photograph? In other words, did you see any other photographs?

A. I didn't see any other -- he had some other photographs, but I didn't see them.

Q. Okay. You mean you didn't see what was in the photographs?

A. No, I didn't.

Q. Did you see a stack of what appeared to be photographs?

A. Yeah.

Q. How big of a stack?

A. Oh, you know, about an inch, maybe a half inch. You know, just a stack, like a stack of playing cards, like a hand."

* * *

"Q. Did he tell you why he wasn't showing you those photographs?

A. I can't really recall. I'm trying to think. I think they were more explicit, and -- I think they were more explicit and he didn't want to show them to me.

Q. When you say more explicit, what do you mean?

A. More than just a head shot.

Q. You mean naked photographs?

A. I would assume that would be the case.

Q. Why do you assume that?

A. Because of the one shot that he showed me, and he described some of the things in these photographs to me.

Q. Okay, and what did he describe?

A. Well, it was a couple of different occasions that he described these things to me. You know, one was at that office, and once on the telephone, a conversation, as I recall, shortly after the incident, and he was describing some kinky photographs to me."

* * *

"Q. Okay, and could you give a brief description of what Langkos, of how he described the photos to you?

A. Well, he described in detail certain sexually explicit photos.

Q. Of whom?
A. Of Kelly Boyle."

* * *

"Q. From your conversation with Langkos, did it appear to you that the half inch to an inch stack of photos were all photos of Kelly Boyle?

A. I believe they were. He indicated that, I think he indicated that they were.

Q. Okay, and what makes you think he indicated that?

A. Because I -- as I recall, he mentioned that there were more here, but that he couldn't show me all these because they were, you know, he said he couldn't show me those.

Q. Because why?

A. Because they were, you know, I don't think he wanted me to see them, or he mentioned that he -- I can't recall if he

mentioned that he didn't want me to see then, or if he just indicated to me that they were something that I shouldn't be seeing.

Q. Because they were sexually explicit?

A. Right, because they were sexually explicit and that I shouldn't be seeing these."

APPENDIX W

APPENDIX W

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

INGHAM COUNTY PROSECUTING ATTORNEY,

Plaintiff,

v

UNITED STATES CURRENCY AND ONE (1) 1981 FORD FAIRMONT,

Defendant.

CLAIMANT: JOSEPH EMILE SISSLER

File No. 90-65348-CZ

Hon. Peter D. Houk

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

DONALD E. MARTIN (P17138)
Ingham County Prosecuting Attorney
By: Guy L. Sweet (P34298)
Assistant Prosecuting Attorney
Asset Seizure Unit
303 West Kalamazoo Street
Lansing, MI 48933
(517) 483-6108

STUART R. SHAFER (P25599)
REID AND REID
Attorneys for Defendant/Claimant
One Business & Trade Center
200 Washington Square, North
Lansing, Michigan 48933-1384
Telephone: (517) 487-6566

At a session of said Court held in the Circuit Courtrooms in the

County of Ingham, State of Michigan, on the 19th day of Dec., 1990.

PRESENT: HON. PETER D. HOUK, CIRCUIT JUDGE

This matter having come before the Court upon the motion of Claimant Sissler for a temporary restraining order enjoining Lt. Paul Whitford, Detective Steve Early, other members of the Tri-County Metro Narcotics Squad, and F.B.I. Agent Langkos from contacting or communicating with James Joseph, directly or indirectly, and the Court having reviewed the motion and exhibits filed in support, and it appearing to the Court that unless a temporary restraining order issues that the ongoing criminal investigation being conducted by the Lansing Police Department Captain James Rapp under the direction of the Ingham County Prosecuting Attorney will be irreparably harmed or obstructed in that James Joseph may be a material witness with personal knowledge and information concerning the allegations presently under investigation and that any

pressure, threats, intimidation, or harassment of him may compromise the investigation and, thereby, not only obstruct justice, but cause harm to Claimant Sissler's ability to demonstrate flagrancy at the February 1, 1990 suppression hearing.

NOW THEREFORE, IT IS HEREBY ORDERED that, pending a hearing on Claimant Sissler's Motion for a Preliminary Injunction and until further order of this Court, Lt. Whitford, Detective Early, and the other members of the Tri-County Metro Narcotics Squad, and F.B.I. Agent Langkos, and their agents and others who act in concert with them, who receive actual notice of this Order be and hereby are restrained and enjoined from having any contact or communications with James Joseph regarding the search of Robert Baldori's home on 1-16-90 and the seizure of any property therefrom directly or indirectly.

IT IS FURTHER ORDERED that Claimant Sissler's Motion for a Preliminary Injunction

will be heard by this Court on January 3, 1991 at 9:30 a.m.

IT IS FURTHER ORDERED that Detective Steve Early and Lt. Paul Whitford shall make themselves available for a deposition on the subject matter of Claimant's motion prior to the hearing for a preliminary injunction.

This temporary restraining order issued on 19th day of December, 1990 at 9:45 a.m. o'clock.

PETER D. HOUK
CIRCUIT JUDGE

Countersigned:
Mary Jo Graham
Deputy Court Clerk

APPENDIX X

APPENDIX X

The following is pertinent testimony of Steven Luciano, from deposition of January 4, 1991, located in R. 69 of the District Court record:

"Q. All right. You have indicated that -- it is your position that, if I ask you any questions concerning the photographs and/or slides that were taken from the Baldori premises, you will not answer those questions?

A. In regard to the pictures or slides that were taken, that is correct I'm not going to answer any questions in regard to those.

Q. And by what authority are you not going to answer those questions?

A. By me indicating that I believe I have a Fifth Amendment right not to say anything that might incriminate me, unless -- I would be glad to answer those questions if you can give me, in writing, from the Attorney General's Office, immunity from any prosecution on anything I might say, then I would be glad to answer them.

Q. Okay. Just so the record is clear, as I understand it, you're exercising your rights under the United States and Michigan Constitutions, to not answer questions concerning the issue of the photographs and slides that were taken from the Baldori premises, because you believe that the answer you give may tend to incriminate you?

A. Right.

Q. My next line of questioning is not meant to harass you, but merely just to test the fact that you tend to plead that, so please

feel free to refuse to answer these questions.

Do you know who took the photographs and slides from the Baldori premises?

A. I'm not going to answer that.

Q. Do you have any information concerning the photographs and slides taken from the Baldori premises?

A. I'm not going to answer that.

Q. Okay. Is it your intent, then, if I ask you any further questions concerning the photographs or slides issue, that you will not answer those questions?

A. That's correct.

Q. Okay. And that's regardless of whether the time frame is actually on premises, during the search warrant or after the execution of the search warrant?

A. That's correct."

* * *

The following is pertinent testimony of

Christopher Magnus, located in R. 69 of the

District Court Record:

"Q. When you were at the search warrant, on January 16 of 1990, did you see any photos or slides depicting Kelly Boyle naked?

A. I have been advised that I'm a suspect in a criminal case involving photographs and slides from there. And I think it would be unwise for me to answer any questions regarding --

Q. Are you refusing to answer, based on your Fifth Amendment right?

A. Yes.

Q. Is it your position that any questions I ask concerning photographs and/or slides, you will refuse to answer, based on your Constitutional right not to incriminate yourself?

A. Yes, due to the fact that there is an ongoing criminal investigation in which I have been advised that I am a suspect.

Q. My next series of questions are not meant to harass you, just to make sure of your position, so feel free to tell me that you refuse to answer.

Do you know who took the photos and slides?

A. I refer to my previous response.

Q. Did you take the photos or slides from the Baldori house?

A. I refer to my previous response.

Q. Okay. When you say you refer to your previous response, you're exercising your rights under the U.S. and Michigan Constitution, to refuse to answer?

A. Correct."

APPENDIX Y

APPENDIX Y

Pertinent portions of the criminal Complaint filed against Officer Daniel Zolnai read as follows:

THE PEOPLE OF THE STATE OF MICHIGAN	v	ZOLNAI, DANIEL 364 EAST ROAD DIAMONDALE, MI 48821

Victim or complainant: (CV) RAPP CAP JAMES

Complaining Witness: (CV) RAPP CAP JAMES

Date: On or About: 1/16/90 - 7/12/90

City of Lansing

INGHAM COUNTY

Charge: 01 NEGLECT DUTY

STATE OF MICHIGAN, COUNTY OF INGHAM

The complaining witness says that on the date and at the location described, the defendant, contrary to law,

OFFENSE LOCATION: CITY OF LANSING

COUNT I

ID [Zolnai] being a person holding a public trust or employment, willfully neglect to perform a duty of duties required by law; specifically: the defendant [sic] was required by either state law or federal loaw [sic] or

both, to properly execute a search warrant at 2719 E. Mt. Hope, Meridian Townshipm [sic] on 1/16/90; and that the defendant wilfully exceeded the authority granted by the search warrant by removing property that came from persons residing at 2719 E. Mt. Hope, Meridian Township, that was not named in the search warrant, was not evidence of crime and was not contraband and/or that defendant failed and/or refused to properly safeguard or account for property he knew came from, or was removed from 2719 E. Mt. Hope, Meridian Township, following execution of the search warrant that belonged to another; Contrary to MCLA 740.478; MSA 28.746 (750.478).

Misdemeanor: 1 Year and/or $500.00.

* * *

Pertinent portions of the criminal Complaint filed against Officer Les Diebolt read as follows:

THE PEOPLE OF v DIEBOLT, LESLIE R.

THE STATE OF 408 KINGMAN

MICHIGAN MASON, MI 48854

Complaining Witness: (CV) RAPP CAP JAMES

Date: On or About: 1/16/90 - 02/04/91

City of Lansing

INGHAM COUNTY

Charge: 01 NEGLECT DUTY

STATE OF MICHIGAN, COUNTY OF INGHAM

The complaining witness says that on the date and at the location described, the defendant, contrary to law,

OFFENSE LOCATION: CITY OF LANSING

COUNT I

ID [Diebolt] being a person holding a public trust or employment, willfully neglect to perform a duty of duties required by law; specifically: the defenant [sic] was required by either state law or federal loaw [sic] or both, to properly execute a search warrant at 2719 E. Mt. Hope, Meridian Township [sic] on 1/16/90; and that the defendant wilfully exceeded the authority granted by the search warrant by removing property that came from

persons residing at 2719 E. Mt. Hope, Meridian Township, that was not named in the search warrant, was not evidence of crime and was not contraband and/or that defendant failed and/or refused to properly safeguard or account for property he knew came from, or was removed from 2719 E. Mt. Hope, Meridian Township, following execution of the search warrant that belonged to another; Contrary to MCLA 740.478; MSA 28.746 (750.478).

Misdemeanor: 1 Year and/or $500.00.

APPENDIX Z

APPENDIX Z

The following are relevant portions of MCL

764.1(1)

"764.1 Process; power to issue, allowance of writ by prosecutor

Sec. 1.(1) For the apprehension of persons charged with a felony, misdemeanor, or ordinance violation a magistrate may issue processes to implement this chapter, except that a magistrate shall not issue warrants for other than minor offenses until an order in writing allowing the issuance of the warrant is filed with the magistrate and signed by the prosecuting attorney [emphasis added], or unless security for costs is filed with the magistrate."

MCL 764.1a(1):

"A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the person accused in the complaint committed that offense. [Emphasis added]. The complaint shall be sworn to before a magistrate or clerk."

Supreme Court, U.S.
FILED
DEC 28 1992
OFFICE OF THE CLERK

No. 92-717

In the Supreme Court of the United States

OCTOBER TERM, 1992

JOSEPH EMILE SISSLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

SEAN CONNELLY
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

18 pp

QUESTIONS PRESENTED

1. Whether the Confrontation Clause was violated when officers whom petitioner called to testify at a pretrial suppression hearing asserted their Fifth Amendment privilege against compelled self-incrimination.

2. Whether a federal magistrate properly issued a search warrant conditioned on an informant's making a controlled delivery of marijuana to a suspect's house, where the suspect had agreed during tape-recorded conversations to accept the marijuana.

3. Whether evidence validly seized from petitioner during a warrant-authorized search must be suppressed because the officers exceeded the scope of the warrant by seizing items belonging to third parties.

4. Whether petitioner's statements to the police were properly admitted at trial.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	8
Conclusion	14

TABLE OF AUTHORITIES

Cases:

Andresen v. *Maryland*, 427 U.S. 463 (1976)	12
California v. *Green*, 399 U.S. 149 (1970)	8
Coy v. *Iowa*, 487 U.S. 1012 (1988)	8
Dutton v. *Evans*, 400 U.S. 74 (1970)	8
Illinois v. *Gates*, 462 U.S. 213 (1983)	3
Maryland v. *Craig*, 110 S. Ct. 3157 (1990)	8
McCray v. *Illinois*, 386 U.S. 300 (1967)	8
Minnesota v. *Olson*, 495 U.S. 91 (1990)	6, 13
Pennsylvania v. *Ritchie*, 480 U.S. 39 (1987)	8
Rivera v. *United States*, 928 F.2d 592 (2d Cir. 1991)	10
United States v. *Borromeo*, 954 F.2d 245 (4th Cir.), cert. denied, 112 S. Ct. 3012 (1992)	12
United States v. *Decker*, 956 F.2d 773 (8th Cir. 1992)	12
United States v. *Hale*, 784 F.2d 1465 (9th Cir.), cert. denied, 479 U.S. 829 (1986)	11
United States v. *Heldt*, 668 F.2d 1238 (1982), cert. denied, 456 U.S. 926 (D.C. Cir. 1982)	11
United States v. *Hendricks*, 743 F.2d 653 (9th Cir. 1984), cert. denied, 470 U.S. 1006 (1985)	11
United States v. *Kimble*, 719 F.2d 1253 (5th Cir. 1983), cert. denied, 464 U.S. 1073 (1984)	9
United States v. *Lambert*, 887 F.2d 1568 (11th Cir. 1989)	12
United States v. *Matlock*, 415 U.S. 164 (1974)	8, 9
United States v. *Medlin*, 842 F.2d 1194 (10th Cir. 1988)	12, 13

Cases—Continued: Page

United States v. *Rettig*, 589 F.2d 418 (9th Cir. 1978)..... 11
United States v. *Wylie*, 919 F.2d 969 (5th Cir. 1990)..... 10
United States v. *Young*, 877 F.2d 1099 (1st Cir. 1989).... 12
Waller v. *Georgia*, 467 U.S. 39 (1984) 11, 12

Constitution and statute:

U.S. Const.:
Amend. IV 6, 11
Amend. V 5, 8
Amend. VI 5, 8, 9
Confrontation Clause 6, 8, 9
21 U.S.C. 846 2

In the Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-717

JOSEPH EMILE SISSLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-34) is unpublished, but the judgment is noted at 966 F.2d 1455 (Table). The opinions and orders of the district court (Pet. App. 35-55, 56-77) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 1992. On August 19, 1992, Justice Stevens extended the time for filing a petition for a writ of certiorari to and including November 7, 1992. The petition for a writ of certiorari was filed on October 23, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a conditional guilty plea in the United States District Court for the Western District of Michigan, petitioner was convicted of attempted possession of marijuana with intent to distribute it, in violation of 21 U.S.C. 846. The district court sentenced petitioner to 57 months' imprisonment, to be followed by three years' supervised release. Pet. App. 90. The court of appeals affirmed. *Id.* at 1-34.

1. On January 10 and 11, 1990, Robert Baldori and an informant discussed a marijuana transaction. Baldori told the informant that he would take delivery of the marijuana on January 15, 1990. Based on tape recordings of the conversations and other information concerning Baldori's prior marijuana dealings, a federal magistrate judge issued a warrant on January 12, 1990, for the search of Baldori's residence. The warrant authorized the seizure of marijuana, marijuana proceeds in the form of U.S. currency, and various records relating to marijuana transactions and proceeds. The warrant was expressly conditioned on a successful delivery of marijuana by the informant to Baldori's residence. Pet. App. 2-3, 12-13, 40-41.

On January 15, 1990, the informant delivered 88 pounds of marijuana to Baldori. While the informant was inside Baldori's residence, officers watching the house saw petitioner drive up and go inside. The informant left the house shortly after midnight. He confirmed having delivered the marijuana to Baldori, but said he had not spoken with petitioner. Pet. App. 3.

After the informant successfully made the controlled delivery, some two dozen federal and local officers executed the search warrant. When the officers entered the

house after first announcing their presence, they saw petitioner and Baldori throwing garbage bags of marijuana out a rear door. In the course of the search, the officers found a travel bag containing $130,000 in cash and a briefcase containing some additional cash. The officers continued to search the residence for more than five hours. While the search was being conducted, the officers advised petitioner of his *Miranda* rights. After signing a written acknowledgement of those rights, petitioner agreed to talk with the officers. Petitioner admitted he had intended to use the cash in his travel bag to buy marijuana from Baldori. Pet. App. 3-4; Gov't C.A. Br. 6.

2. Following three days of hearings, the district court denied petitioner's motion to suppress the cash and his incriminating statements. Pet. App. 35-46. The court found that the magistrate issuing the warrant had "a substantial basis for concluding that there was probable cause to find marijuana at the Baldori residence once it was delivered by the informant." *Id.* at 42 (citing *Illinois* v. *Gates*, 462 U.S. 213, 238-239 (1983)). The court rejected petitioner's claim that the warrant's description of the items to be seized was overbroad. *Id.* at 42-43. The court specifically held that the officers properly had opened petitioner's overnight bag and briefcase as part of the warrant-authorized search. *Id.* at 44-46.

The court also denied petitioner's motion to suppress the incriminating statements he made to officers during the search. Pet. App. 46-54. The court found that petitioner had waived his *Miranda* rights and made the statements voluntarily. *Ibid.* The court observed that petitioner was a college graduate with prior experience in the criminal justice system who, during a lengthy conversation with the officers, "freely and openly dis-

cussed the Latin American policy of the Bush Administration, the war on drugs, recent magazine articles, [petitioner's] mother, and [his] employment with the National Institute[s] of Health." *Id.* at 53. The court specifically found, contrary to petitioner's testimony, that petitioner had not requested an attorney until the end of the interview. *Id.* at 47-49. Instead, the court found that "no question concerning the need for counsel was asked by [petitioner] until the end of the interrogation." *Id.* at 48. "At that point," the court found, "the questioning was stopped as is required by *Miranda* and its progeny." *Ibid.*

3. After entering a conditional guilty plea, but before sentencing, petitioner moved to reopen the suppression hearing. Petitioner's motion was based on newly discovered evidence indicating that the local officers had exceeded the scope of the warrant by, among other things, seizing slides and photographs of Baldori's girlfriend that were later shown around the office. As a result of those actions, several local officers were placed under investigation and two officers were charged with criminal offenses in state court. The district court reopened the suppression proceeding by granting "a hearing on the issue of whether the conduct of the officers who executed the search warrant exhibited a 'flagrant disregard' for its limitations." At the reopened hearing, petitioner called several officers who declined to testify by invoking the Fifth Amendment privilege against compulsory self-incrimination. Pet. App. 5-6, 58-59.

Following the reopened suppression hearing, the district court again denied petitioner's motion to suppress. Pet. App. 56-77. The court held that, while suppression of even legitimately seized evidence might be appropriate where the searching officers flagrantly disregard the

limitations of a warrant by conducting a general search, the record in this case did not support such a finding. *Id.* at 64-65. The court held that many of the challenged items (*i.e.*, numerous documents and computer disks belonging to Baldori) had properly been seized pursuant to the warrant. *Id.* at 65-69. The court found that "several items whose seizure cannot be justified on the grounds of practicality were taken by law enforcement officers." *Id.* at 69. Among the improperly seized items, according to the court, were slides and photographs of Baldori's girlfriend, Canadian currency belonging to Baldori's girlfriend, and a computer printer and facsimile machine belonging to Baldori. *Id.* at 69-70. The court declined to find that the officers flagrantly disregarded the warrant, however, and it held that a "search does not become invalid simply because some items not mentioned by the warrant are seized." *Id.* at 70-71. The court explained that "[t]his is especially true where, as in the present case, the items outside the scope of the warrant are not going to be used as evidence against the defendant." *Id.* at 71. The court also rejected petitioner's claim that his Sixth Amendment right to confront witnesses was violated when the officers petitioner called as witnesses at the hearing invoked their Fifth Amendment rights and declined to testify. Pet. App. 72-74.

4. The court of appeals affirmed. Pet. App. 1-34. The court first held that petitioner's Sixth Amendment right to confront witnesses was not violated when several officers invoked their Fifth Amendment rights and declined to testify at the suppression hearing. *Id.* at 6-8. The court explained that the officers were not "witnesses against" petitioner within the meaning of the Sixth Amendment, because it was petitioner who called them and they offered no testimony at all. *Id.* at 7. In any

event, the court noted, this Court consistently has referred to the Confrontation Clause as a "trial right," *id.* at 8, and "has rejected Confrontation Clause challenges to the use of incompetent testimony during suppression hearing[s]," *id.* at 7-8.

The court of appeals then rejected petitioner's challenges to the issuance and scope of the warrant. The court held that petitioner had standing as an overnight guest in Baldori's house to challenge the search. Pet. App. 9-11 (citing *Minnesota* v. *Olson*, 495 U.S. 91 (1990)). But the court upheld the magistrate judge's determination that there would be probable cause to search the house once Baldori accepted delivery of the marijuana on January 15, 1990. Pet. App. 11-16. The court explained that some courts have required that the contraband be on a "sure course" to the place to be searched when the warrant is issued, while other courts simply require that there be probable cause to believe that the contraband will be on the premises when the warrant is executed. *Id.* at 13-15. The court found that it "need not decide" between those formulations because "[t]he anticipatory warrant in this case is valid under either standard." *Id.* at 15. Based on the facts that the informant previously had arranged to deliver the marijuana to Baldori on January 15th and that the police controlled the marijuana in question, the court concluded that "there was sufficient assurance that marijuana would be delivered to Baldori's home to satisfy both the sure course and probable cause standards." *Id.* at 15-16.[1]

---

[1] The court also rejected several other Fourth Amendment claims. It held that the officers executed the warrant within a reasonable time after the controlled delivery (*id.* at 16-17); that the officers properly searched petitioner's briefcase and bag while executing the warrant (*id.* at 17-20); and that the search warrant was

The court also rejected petitioner's claim that suppression of everything seized during the search was required because the police flagrantly exceeded the scope of the warrant. Pet. App. 25-33. After reviewing various items seized during the search (*id.* at 26-30), the court agreed with petitioner that "some of the officers apparently engaged in egregious misconduct while searching the Baldori home," *id.* at 32. The court observed, however, that "the evidence incriminating [petitioner], the cash found in his overnight bag and briefcase, was within the scope of the warrant." *Id.* at 30. The court thus explained that "even if we were to find that the officers searched Baldori's home in flagrant disregard of the warrant's scope, we would find that the officers did not violate [petitioner's] rights." *Id.* at 32. The court concluded that "deterrence would not be served by allowing [petitioner] to benefit from the alleged violation of Baldori's and [Baldori's girlfriend's] Fourth Amendment rights." *Id.* at 32-33.

Finally, the court rejected petitioner's claim that his incriminating statements should have been suppressed. Pet. App. 33-34. The court noted that the arresting officer's testimony "indicates that [petitioner] engaged in a wide-ranging conversation for approximately two hours until he indicated that he wished to speak with an attorney" and that "[t]he interrogation then stopped." *Id.* at 33-34. The court found no evidence of coercion in the record but instead concluded that "the evidence indicates that [petitioner] voluntarily waived his

---

not facially overbroad in most respects but that, even if it should have limited the dates of records to be seized, the remedy simply would be to sever the invalid portion of the warrant from the remainder (*id.* at 20-25).

Miranda rights and agreed to talk with the officers." *Id.* at 34.

ARGUMENT

1. Petitioner contends (Pet. 21-31) that his Sixth Amendment right "to be confronted with the witnesses against him" was violated when several officers invoked their Fifth Amendment right against compelled self-incrimination at the suppression hearing. The court of appeals correctly rejected that contention.

This Court's decisions consistently refer to the right to confrontation as a right that applies "at trial." *Maryland* v. *Craig*, 110 S. Ct. 3157, 3164 (1990). See *Coy* v. *Iowa*, 487 U.S. 1012, 1016 (1988) (Confrontation Clause grants right to face-to-face confrontation of "those who appear and give evidence at trial") (quoting *California* v. *Green*, 399 U.S. 149, 175 (1970) (Harlan, J., concurring)); *Pennsylvania* v. *Ritchie*, 480 U.S. 39, 52, 54 n.10 (1987) (plurality opinion) ("[t]he opinions of this Court show that the right to confrontation is a *trial* right," and "the Court normally has refused to find a Sixth Amendment violation when the asserted interference with cross-examination did not occur at trial"); *Dutton* v. *Evans*, 400 U.S. 74, 89 (1970) (plurality opinion) (right of confrontation "advance[s] a practical concern for the accuracy of the truth-determining process in criminal trials").

As these cases indicate, the Confrontation Clause does not apply to pretrial suppression hearings. In *United States* v. *Matlock*, 415 U.S. 164 (1974), the Court held that the Confrontation Clause did not prohibit a police officer from testifying at a suppression hearing about hearsay statements made by an informant. The Court relied on its prior holding in *McCray* v. *Illinois*, 386 U.S. 300 (1967), which "specifically rejected the claim that defen-

dant's right to confrontation under the Sixth Amendment and Due Process Clause of the Fourteenth Amendment had in any way been violated." 415 U.S. at 175. The Court observed that, in *McCray*, "[t]he Government would have been obligated to produce the informer and to put him on the stand had it wanted to use his testimony at defendant's trial, but we sustained the use of his out-of-court statements at the suppression hearing." *Id.* at 174.

Even if the Confrontation Clause applied at pretrial suppression hearings, petitioner's confrontation rights would not have been violated because the officers he sought to examine were not "witnesses against him" within the meaning of the Sixth Amendment. Petitioner does not contend that any statements or testimony of those officers were offered against him, but instead claims that his own inability to call the officers prevented him from showing that they flagrantly exceeded the scope of the warrant.[2] Pet. 21, 29-30. Petitioner cites no authority for his extraordinarily broad reading of the Confrontation Clause, which is contrary to its plain language.

In any event, petitioner could not show prejudice even if his claim otherwise were valid. The court of appeals agreed with petitioner that "some of the officers apparently engaged in egregious misconduct while searching the Baldori home." Pet. App. 32. The court thus accepted as true the facts that petitioner sought to establish through the officers' testimony, but nevertheless held that petitioner was not entitled to suppression.

---

[2] Petitioner's reliance (Pet. 24-25) on *United States* v. *Kimble*, 719 F.2d 1253, 1257 (5th Cir. 1983), cert. denied, 464 U.S. 1073 (1984), is thus doubly flawed. That case involved a government witness who (1) testified against the defendant (2) at trial.

Consequently, the alleged denial of confrontation was of no significance.

2. Petitioner next contends (Pet. 31-35) that the federal magistrate improperly issued a warrant conditioned on the informant's successful delivery of the marijuana to Baldori's residence. Petitioner does not contest the legality of anticipatory warrants in general. Every federal court of appeals that has considered the question has held that anticipatory warrants may be issued in appropriate cases. See *United States* v. *Wylie*, 919 F.2d 969, 974 (5th Cir. 1990) (upholding such a warrant and noting that "five other circuit courts of appeals have approved of anticipatory search warrants"). Indeed, where officers anticipate that a controlled delivery will occur in a residence, they should be encouraged to seek advance judicial approval rather than relying on exigent circumstances to justify a warrantless search.

There is no basis for further review of petitioner's fact-bound claim that probable cause was lacking here because the marijuana was not on a "sure course" for delivery to Baldori's residence. At the time the warrant was issued, Baldori had already agreed to accept the marijuana on January 15th, and the delivery was within the control of the officers and their cooperating informant.[3]

---

[3] Some courts have emphasized that greater assurances exist where probable cause is "based on a delivery controlled by the government" than when it is based on "a delivery expected in the ordinary course of the drug organization's operations." *Rivera* v. *United States*, 928 F.2d 592, 603 (2d Cir. 1991). Contrary to petitioner's suggestion (Pet. 34-35), the fact that the police had not yet obtained the marijuana to be used in the controlled delivery does not defeat probable cause. In the case principally relied on by petitioner (Pet. 34-35), the authorities had no control over whether the

3. Petitioner next contends (Pet. 35-44) that the cash seized from his bags should have been suppressed because the officers flagrantly disregarded the warrant's limitations when they seized other personal property belonging to Baldori and his girlfriend. That claim is precluded by *Waller* v. *Georgia*, 467 U.S. 39 (1984). In *Waller*, the Court summarily rejected a Fourth Amendment claim identical to the one raised by petitioner in this case. 467 U.S. at 43-44 n.3. Petitioners in *Waller* cited some of the same lower court decisions cited by petitioner for the proposition that when police seize items in flagrant disregard of the warrant's limitations "the entire fruits of the search, and not just those items as to which there was no probable cause to support seizure, must be suppressed." *Id.* at 44 n.3 (citing *United States* v. *Heldt*, 668 F.2d 1238, 1259 (D.C. Cir. 1981), cert. denied, 456 U.S. 926 (1982); *United States* v. *Rettig*, 589 F.2d 418, 423 (9th Cir. 1978)). In rejecting that claim, the Court explained:

> Petitioners do not assert that the officers exceeded the scope of the warrant in the places searched. Rather, they say only that the police unlawfully seized and took away items unconnected to the prosecution. The Georgia Supreme Court found that all items that were unlawfully seized were suppressed. In these circumstances, there is certainly no re-

---

drugs would end up in the home of the suspect. See *United States* v. *Hendricks*, 743 F.2d 653 (9th Cir. 1984), cert. denied, 470 U.S. 1006 (1985) (package containing drugs was being held at airport and there were no assurances suspect would claim it and bring it back to his residence). Compare *United States* v. *Hale*, 784 F.2d 1465, 1468-1469 (9th Cir.) (distinguishing *Hendricks* in holding that "a controlled delivery pursuant to a warrant issued earlier is, in this situation, permissible"), cert. denied, 479 U.S. 829 (1986).

> quirement that lawfully seized evidence be suppressed as well.

467 U.S. at 44 n.3 (citing *Andresen* v. *Maryland*, 427 U.S. 463, 482 n.11 (1976) and other cases).

In this case, the officers did not exceed the scope of the warrant with respect to the places they searched. The court of appeals held that the officers properly searched petitioner's briefcase and bag while executing the warrant. Pet. App. 17-20. Under *Waller*, there is thus no basis for suppressing the lawfully seized evidence even though the officers may have flagrantly disregarded the warrant's limitations when they seized other evidence.

Notwithstanding *Waller*, the Tenth Circuit has held that "[w]hen law enforcement officers grossly exceed the scope of a search warrant in seizing property, the particularity requirement is undermined and a valid warrant is transformed into a general warrant thereby requiring suppression of all evidence seized under that warrant." *United States* v. *Medlin*, 842 F.2d 1194, 1199 (1988).[4] This case presents no occasion to resolve the tension between *Medlin* and *Waller*. Even assuming the validity of the rule of total suppression adopted by the Tenth Circuit in *Medlin*, the court of appeals correctly

---

[4] Apart from *Medlin*, federal courts of appeals consistently have declined to suppress evidence legitimately seized pursuant to a warrant simply because the police improperly seized other items not authorized by the warrant, although some courts continue to leave open the possibility of total suppression if the search was conducted in flagrant disregard of the warrant's limitations. See, *e.g.*, *United States* v. *Decker*, 956 F.2d 773, 778-779 (8th Cir. 1992); *United States* v. *Borromeo*, 954 F.2d 245, 246-247 (4th Cir.), cert. denied, 112 S. Ct. 3012 (1992); *United States* v. *Lambert*, 887 F.2d 1568, 1572-1573 (11th Cir. 1989); *United States* v. *Young*, 877 F.2d 1099, 1105-1106 (1st Cir. 1989).

held that petitioner is not entitled to relief. Unlike in *Medlin*, where the Tenth Circuit expressly held that "Medlin's Fourth Amendment rights were violated by the seizure and removal of the items" not covered by the warrant (842 F.2d at 1198), the items improperly seized in this case did not belong to petitioner. While petitioner's status as an overnight guest carried with it "a legitimate expectation of privacy in his host's home," *Minnesota* v. *Olson*, 495 U.S. 91, 98 (1990), it did not give him any property interest in items that belonged to Baldori and his girlfriend. Petitioner thus is seeking suppression not to remedy any unreasonable invasion of his own privacy interests but rather to remedy an allegedly unreasonable invasion of third parties' property interests. The rule of *Medlin*, whatever its validity, does not extend that far.

4. Finally, petitioner challenges (Pet. 44-48) the lower court factual findings that he voluntarily waived his *Miranda* rights and that the police ceased questioning him as soon as he indicated a desire to speak with an attorney. The district court's findings on these issues were based on credibility determinations following a lengthy evidentiary hearing. Petitioner has failed to show that the district court's factual findings were clearly erroneous. There is no basis for further review of that fact-bound issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

SEAN CONNELLY
Attorney

DECEMBER 1992